

~~Supreme Court, U.S.~~
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In The

Supreme Court of the United States
OCTOBER TERM, 2005

LLOYD EDWIN HUMPHREYS,

Petitioner,

V.

OREGON STATE BAR,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
OREGON SUPREME COURT

REV. LLOYD E. HUMPHREYS,
M.Th., J.D.

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QUESTIONS PRESENTED FOR REVIEW

Petitioner was an attorney admitted to practice in multiple jurisdictions. (Iowa 1962, Oregon 1980, Texas 1987.) When he resided in Texas He was convicted of a tax offense in 1992 for conduct back to 1983. . The Texas Bar Board of Disciplinary Action (BODA) dismissed a complaint for discipline exonerating Petitioner, but on appeal the Texas Supreme Court under a new mandatory reciprocal discipline provision disbarred him in 1994. He traveled to Oregon to practice law in 2001. He did not reside in Oregon prior thereto, although a member of the Oregon State Bar.

1. Whether the Oregon State Bar and Supreme Court Rules and Procedure for mandatory summary reciprocal discipline "special proceedings" without the same due process, equal protection and privileges and immunities granted to a resident lawyer violates the 14th Amendment to the U.S. Constitution, as to a multi-jurisdictional lawyer that traveled to Oregon?
2. Whether an attorney is entitled to the same rights and rule of law that apply to ordinary citizens as to the statute of limitations, ex post facto laws, bill of attainder, burden of proof, confrontation of "witnesses, opportunity to present evidence, hearings, trial for court proceedings concerning his right to practice his profession.
3. What due process and rules of law apply to lawyer disciplinary cases in the United States?
4. Can a state violate it's own statutes and procedural rules in imposing discipline on a lawyer?

5. What rule of law in effect applies to lawyer discipline - the time of alleged conduct, time the complaint was filed, or final court order?

PARTIES TO PROCEEDING

Petitioner in this case is Lloyd E. Humphreys, A/K/A Reverend Justus Lloyd Humphreys.

The Respondent is the Oregon State Bar.

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PETITION FOR WRIT OF CERTIORARI TO THE
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TO THE SUPREME COURT OF THE UNITED STATES:

Lloyd E. Humphreys a/k/a Reverend Justus L. Humphreys, respectfully petitions for Writ of Certiorari to review the judgment of the Oregon Supreme Court in this case

OPINIONS BELOW

The Oregon Supreme Court entered a mandatory reciprocal discipline opinion disbarring the Petitioner without

hearing, or evidentiary panel, and other procedures in contested cases allowed resident lawyers based on the 1994 disbarment in another state with no current misconduct.

Upon consideration by the court.

The Oregon State Bar's recommendation that the accused be disbarred from the practice of law is allowed. Justus Buck Humphreys (OSB No. 80470) is disbarred from the practice of law in Oregon, effective the date of this order. The Bar's motion to strike the supplemental affidavit is denied.

Dated this 8th Day of March 2005.

Upon consideration by the court.

The court has considered the petition for reconsideration and orders that it be denied.

Dated this 24th day of May 2005.

The Orders were entered without hearing and no findings of fact or conclusions of law were made.

JURISDICTION

Original opinion below was on 3/8/05. A Petition for Review was denied on 5/24/05, by the Oregon Supreme Court, denying Petitioner's rights, privileges and immunities, in which statutes, rules and enforcement procedures validity were in question as repugnant to the United States Constitution and laws involved. The jurisdiction of this court is invoked under 28 U.S.C. 1257

CONSTITUTIONAL PROVISIONS AND STATUTES

1. The United States Constitution Articles 1, § CL 10, Article IV § 2, Article 1 CL 3 § 9, pertinent provisions

are provided for in the appendix to this petition.

2. The Fifth Amendment, United States Constitution, pertinent provisions are provided for as set forth in the appendix to this petition.
3. The Sixth Amendment, United States Constitution, pertinent portions are provided for as set forth in the appendix to this petition.
4. The Seventh Amendment, United States Constitution, pertinent portions are provided for as set forth in the appendix to this petition.
5. The Eighth Amendment, United States Constitution, pertinent portions are provided for as set forth to the appendix to this petition.
6. The Fourteenth Amendment, United States Constitution, pertinent portions are provided for as set forth in this appendix to the petition.
7. The Oregon Constitution pertinent provisions are Art. 1, § 10, Art. 1 § 11, Art. 1 § 17, Art. 1 § 20, Art. 1 § 21, Art. 1 § 33, as set forth in the appendix to the petition.
8. The Oregon Statutes pertinent provisions are ORS 9.527, ORS 10.030, ORS 12.070, ORS 12.130, ORS 12.140, ORS 70.280, ORS 183.310 to 183.550, ORS 183.310(2)(a), ORS 670.325(1), as set forth in the appendix to the petition.
9. The Oregon Bar Rules of Procedure pertinent provisions are BR 2.2, BR 2.3b, BR 2.3d, BR 2.4, BR 2.5, BR 3.5, BR 3.5a, BR 3.5(1), BR 3.5(b), BR 4.5, as set forth in the appendix to the petition.

STATEMENT OF THE CASE

Justus "Buck" Humphreys, was a member of the Oregon State Bar since 1980, the Texas State Bar since 1987, and the Iowa State Bar since 1962. In 1991, he was convicted of federal tax offenses allegedly occurring in the 1980's for total taxes due of \$14,000, by a jury with a dishonorably discharged felon. The federal clerk sent copies of the convictions to the state bars. The Texas Bar found the conviction to be a void judgment because of the illegal juror and recommended no discipline. *No jury trial or trial panel was held.* On appeal, The Texas Supreme Court in 1994 found compulsory reciprocal discipline was mandatory on conviction and disbarred for a five year period.¹ The Iowa and Oregon Bars suspended Humphreys within six (6) months of conviction. In 1994 following the Texas Court ruling Iowa recommended a reciprocal five year suspension with credit for the temporary suspension. *No trial panel hearing was held.* Humphreys residing in Texas since 1987 accepted the suspension and did not oppose it at the Iowa Supreme Court. The court disbarred Humphreys but disbarment was not permanent. Humphreys was reinstated in Oregon after five (5) years. (1992-1997). The Oregon State Bar filed a notice of discipline in another jurisdiction January 12, 2005. The State Professional Responsibility Board (SPRB) held a *private* conference with OSB Disciplinary counsel in November, 2004 and in considering the *confidential* report of disciplinary counsel not given to Petitioner recommended disbarment pursuant to B.R. 3.5. *No Oregon local professional responsibility committee, nor trial panel was appointed.* No evidentiary hearing was held.

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Similar to the Oregon former BR 6.1(e) disbarment rule in effect until (12/14/96).

The Oregon Bar Association Rules of Procedure provide the following in the case of a resident lawyer's discipline:

- (1) appointment of an investigator (Rule 2.2);
- (2) appointment of a Local Professional Responsibility Committee ("LPRC") to take evidence, issue subpoenas, to compel documents and witnesses and make a decision reporting to the next level State Professional Responsibility Board ("SPRB") (Rule 2.3d);
- (3) The SPRB has the same authority as the LPRC for evidentiary hearing. (Rule 2.3b);
- (4) The supreme court disciplinary committee then appoints a trial panel (Rule 2.4) "to try the issues" and render an opinion with "specific findings of fact, conclusions and disposition". Briefs on issues may be filed and a record of the evidence is kept;
- (5) A formal complaint is filed, reviewed by the SPRB for "probable cause". (Rule 2.5);
- (6) Discovery including requests for production and admission and depositions are allowed (Rule 4.5). The burden of proof to establish misconduct is on the bar by clear and convincing evidence.

In this case, and in others involving lawyers admitted to multi-jurisdictional disciplined in another state Rule 3.5 reciprocal discipline applies cutting off and barring all of the above rules and procedures and proceeding directly to formal complaint "based on the discipline in the jurisdiction whose action is reported". (Rule 3.5a). The supreme court may order a hearing at which time the "accused" attorney shall have the

burden of proof (Rule 3.5(f) not the bar as in a resident lawyer case. In this case, however there was no hearing before the supreme court nor any panel or investigating officer, no discovery, and no opportunity to present evidence or be heard. (Query, whether the burden of proof and standard by clear and convincing evidence on the bar changed to the "accused".)

In Oregon the judgment of discipline by Texas in 1994 under Rule 3.5b is conclusive evidence of misconduct. There was no complaint of any misconduct in Oregon, nor has there been any complaint by a client upon which Petitioner has been disciplined in forty two (42) years. There was no complaint of any current misconduct. The misconduct was alleged tax evasion of \$14,000 going back to 1983, twenty two (22) years ago. The conviction in 1991 with a jury that had a convicted felon dishonorably discharged juror that was discovered by Petitioner's defense counsel on the third day of an anticipated six (6) week trial.² The defense counsel ended the trial in two (2) weeks not calling nineteen (19) defense witnesses nor an expert that sat through trial because he expected a new trial. Petitioner has always maintained his actual innocence.

In this case, the "Accused" is actually innocent of any wrongdoing and that there was no question that was raised regarding his "honesty, trustworthiness or fitness as a lawyer". That the only conduct on the part of the "Accused" was to sign tax returns prepared by C.P.A.'s with complete records compiled by office staff which allegedly omitted income for taxes of \$14,000 in total spread over a five (5) year period (i.e. \$2800/year average.) The charges did not meet the Department of Justice Guidelines for prosecution. (See OSB Formal

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Petitioner is a former U.S. Army JAG officer, Vietnam Vet. Someone a juror convicted of a felony, dishonorable discharged from the military might be prejudiced towards.

Opinion 1991-95; Legal Ethics Opinion 362; ABA Ethics Opinion 1279.) **That the judge in sentencing for the "convictions" found that there was no conduct on the part of the Accused as a lawyer, and that it did not involve a scheme of wilful violations.** No action was "knowingly" or "intentionally" done by the "Accused". That further, the facts that were not presented in evidence due to ineffective assistance of counsel, as well as, an exonerating polygraph show no such tax was owed.

The Answer of Petitioner to the Formal Complaint in Oregon filed directly without discovery investigation, and evidentiary hearing, raised the following objections and federal constitutional questions and requested a hearing. They were overruled by the courts mandatory summary judgment:

Petitioner's Answer states: "That the accused files the following objections and requests hearing thereon!"

RECIPROCAL OREGON RULE 3.5 IS UNCONSTITUTIONAL AS A MATTER OF LAW AND FACT: That this proceeding has been filed as a special proceeding under B.R. 3.5. That B.R. 3.5 is contrary to and flies in the face of the statutes, law and constitutions of Oregon and the United States. That as such, it is objected to and should be dismissed or transferred to the standard contested cases formal complaint process provided by B.R. 4 which provides for the administration of resident lawyers in the State of Oregon, with discovery, evidentiary hearing and burden of proof upon the Oregon State Bar (OSB) by clear and convincing evidence. That B.R. 3.5 is applicable only to the "Accused" and to other lawyers similarly situated that as non residents or members of another bar association have suffered discipline in another jurisdiction. (That violates the statutory and constitutional rights of the "Accused" and others in the class of lawyers traveling between jurisdictions, under

privileges and immunities, equal protection, and due process requirements of the 14th Amendment.)

That in this case and others similarly situated, the earlier discipline in another jurisdiction was based upon the same mandatory compulsory discipline process without discovery, evidentiary hearing and a burden of proof placed improperly on the Accused with a different standard of evidence and procedure from resident lawyers accused of the same or similar conduct.

BR. 3.5 VIOLATES OREGON STATUTES: That ORS 670.325 (1) provides that:

670.325 Proceedings on denial of license; retraining violations; authority of hearing officers' record of proceedings. (1) All proceedings for the refusal to issue, or the suspension or revocation of any license, certificate of registration or other evidence of authority required to practice any profession subject to the authority of a professional licensing or advisory board shall be conducted pursuant to the procedure for contested cases required or authorized by ORS 183.310 to 183.550.

That ORS 183.310Aa defines "contested case" as a proceeding:

(2)(a) "Contested case" mean a proceeding before an agency:

(A) In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only

after an agency hearing at which such specific parties are entitled to appear and be heard;
(Emphasis added.)

(ORS 670.325(1) requires "all proceedings" conducted as "contested cases, ORS 183.310, 2a requires a hearing where parties were entitled to appear and be heard. Non of this was done in this case. There were no hearings and Petitioner was not allowed to appear at any agency considerations.)

That ORS 9.527 also requires: "proper proceedings for that purpose."

That "contested case" and "proper proceedings" authorized and required are not the "special proceeding" provided for in B.R. 3.5 which does not provide for discovery, evidentiary hearing, and switches and modifies the burden of proof on the OSB by clear and convincing evidence. This applies only to that class of lawyers that travel in a multiple jurisdiction practice, (This case is in complete opposition to the privileges and immunities, equal protection and due process allowed to resident lawyers that are not admitted elsewhere.) It is disparate and opposite of the equal protection provided in "contested case" proceedings to all resident lawyers accused of the same or similar conduct. (See In Re Medrano, 956 F2d 101 (5th Cir 1992 - requiring a clear and convincing evidence, burden of proof on the bar.)

ORS 70.280 Denial, suspension or revocation of license is prohibited solely because of a criminal conviction; exception. Except as provided in ORS 342.143 or 342.175, no licensing board or agency shall deny, suspend or revoke an occupational or Drofessional license or certification solely for the reason that the applicant or licensee has been convicted of

a crime, but it may consider the relationship of the facts which support the conviction and all intervening circumstances to the specific occupational or professional standards in determining the fitness of the person to receive or hold such license or certificate. [1973 c.359 §1; 1991 c.662 §6a]

(These statutes were not followed by the Oregon Bar Procedure.)

That this special proceeding under B.R. 3.5 violates the due process clause of the 14th Amendment to the U.S. Constitution as it applies in Oregon, and the "due course of law" that every man shall have pursuant to Art. 1, §, 10 of the Oregon Constitution. That Resident lawyers are favored over non resident and multi jurisdictional attorneys do not have the same rights. That it further violates each and all of the following. Art. 1, Sections 11, (Rights of Accused), 17, (Right to jury trial), 20 (Equality of Privileges and Immunities), 21 (No Ex Post Facto Laws), 33 (Other rights and privileges), Oregon Constitution; U.S. Constitution, Article IV, Section 2 (Privilege and Immunities), Amendments V (Due Process, Double Jeopardy), VI (Rights of Accused), VII Trial by Jury, VIII No Excessive Punishment, XIV Privileges and Immunities, due process, equal protection, (See also, Piper v. New Hampshire, 470 US 274 (1985)) - holding that the distinction between residents and non residents by a bar association is unconstitutional.)

BR. 3.5 EXCEPTION - "NO DAY IN COURT:

Humphreys has not had his "day in Court." That there has been no "opportunity to be heard." (B.R. 3.5©)(1)). That the "convictions" and disciplinary proceedings upon which the claims and causes in the Notice of Discipline in Another Jurisdiction (hereinafter referred to as "Notice") are based, were not accomplished with due process and equal protection

of the law allowed under the 5th, 6th, and 14th Amendments of the U.S. Constitution and "due course of law", under Articles I, Sections 1, 10, 11, 17, 20, 21, and 33 of the Oregon Constitution. There being no adequate evidentiary hearing and opportunity to offer evidence on the alleged conduct involved in the 1980's. (Going back to conduct twenty two (22) years ago. Restatement of Conflict of Laws 2nd §104 - "A judgment rendered without judicial jurisdiction or adequate opportunity to be heard will not be recognized or enforced in another state.")

"CONVICTION" - VOID VERDICT:

That the laws of the State of Texas which was the "Accused's" residence at all times material to the 1991 trial (14 years ago) for alleged conduct in the eighties (22 years ago) upon which the underlying "misconduct" and first discipline is based confirm that a verdict of guilty with a dishonorably discharged convicted felon on the jury is a void verdict not entitled to any validity nor "conclusive evidence of guilt." (Texas Criminal Proc. Ann. Art 35.19 (1989), Tweedle v. State, 158 Tex. Crim 200 218 SW2d 846 (1949) See also ORS 10.030 excluding felons as jurors. Restatement of Conflict of Laws 2nd §104 - "A judgment rendered without judicial jurisdiction or adequate opportunity to be heard will not be recognized or enforced in another state." (See also, In Re Matter of Lloyd Humphreys, 880 SW2s 402 (1994)). (BR 1.4 provides the choice of law of Texas should be followed, it was not.)

DELAY & LACK OF "DUE COURSE OF LAW" PREJUDICIAL:

That the claims and causes in the Notice are untimely, delayed and subject to the defense of laches, as well as, barred by the Oregon statute of limitations. That the alleged conduct involved is from the 1980's up to twenty two (22) years ago and the claims of failing to disclose from 1991 "conviction" (14 years ago). They further violate Art. 1, Section 10 of the Oregon

Constitution in that they do not "...completely and without delay..." allow remedy by due course of law for injury done "to" a person, property, or reputation", both in delay and lack of "due course of law." That the "Accused's" property and liberty interests are involved herein and lack of speedy hearing and denial of any trial is presumptively prejudicial to the "Accused", as a matter of law.

BARRED BY STATUTE OF LIMITATIONS:

That Oregon provides several statutes of limitations that show that this action should be barred. This entire proceeding is based upon alleged conduct in the 1980's that were the basis of a United States District Court Judgement in 1991. ORS 12.070 provides: "an action on a judgment or decree of the United States...shall be commenced within ten (10) years".

It is now over thirteen (13) years since that judgment. It should be barred. ORS 12.130 could be considered in this case as well. It provides: "Action for penalty...shall be commenced within one (1) year after the commission of an offense. If the action is not commenced...within two (2) years thereafter on behalf of the state..".

The offenses from the 1980's go back as far as twenty two (22) years ago. If these do not apply then ORS 12.140 would: "An action for any cause not otherwise provided for shall be commenced within ten (10) years."

It has been more than thirteen (13) years since the conviction for conduct twenty two (22) years ago.

EX POST FACTO LAWS SHOULD NOT APPLY:

That in consideration of the Notice and any possible discipline that may be imposed no discipline, or rules of conduct that were established after any of the conduct found to have occurred should be considered or imposed against the "Accused". The

same being ex post facto laws in violation of Article 1, §21 and 10 Oregon Constitution. (E.G. Oregon "Disbarment" under law at the time was, a five (5) year suspension not permanent.) "The basis for lawyer discipline is the ethics rules in force in the state **at the time of the conduct...**" (ABA/BNA Lawyers Manual on Professional Conduct 101:2002. i.e. 1980's.-that was not done in this case.)

That the Texas State Bar Panel on Professional Responsibility, titled Board on Disciplinary Action (BODA) had dismissed the proceeding recommending no discipline exonerating Humphreys. That had BODA suspended the accused for a short time, rather than completely exonerating him from any misconduct by dismissal no disbarment would have occurred (Texas Rule 8.5). But see, Restatement of Conflict of Laws 2nd §104 - "A judgment rendered without judicial jurisdiction or adequate opportunity to be heard will not be recognized or enforced in another state."

Former discipline in another state does not preclude determination that an attorney is fit to practice in Oregon. Many other states have so held. (See E.G. In Re Van Bever, 101 P2d 790 (Ariz 1940), Kentucky Bar v. Signer, 533 SW2d 534 (194. 1976), In Re Weiner, 530 SW 2d 222 (Mo 1975), 547, SW 2d 959) Oregon case law also establishes this Court's individual review and determination whether any sanction is necessary based on the individual case facts shown by the evidence.

"The central inquiry concerns *the present ability* and disposition of the applicant to practice law completely and honestly.: (Restatement 3rd Law of Governing Lawyers, (ALI 2000) § 2 p. 19).

(No allegation as to present ability and fitness has been made.)

That Humphreys has never been disciplined based upon any complaint filed by a client in forty two (42) years. That no judge, attorney, or client who was involved with the underlying charges ever determined from alleged conduct that the "Accused's" conduct should ever be reported or disclosed as misconduct under DR1-103 in any jurisdiction. No such reporting disclosures were made by any judge or attorney that had an obligation to do so, if there was a substantial question as to lawyer Humphreys honesty, trustworthiness or fitness as a lawyer.

Each and every other case that the OSB cites can be distinguished. That each of these cases cited by disciplinary counsel had a trial panel that took evidence concerning the "Accused's" conduct that was involved. The misconduct was either admitted, or not contested, the hearing trial panel found violations of the D.R.'s and there was little or no mitigating circumstances. There were no due process problems. This is not the case here.

Due process and equal protection under the XIV Amendment to the U.S. Constitution, and Art. 1, Section 10 "Due Course" and Sections 21, 33 equal protection under the Oregon Constitution are extant in this case in which:

(1) a felon, dishonorably discharged juror returned a judgment of conviction against Humphreys a former Judge Advocate officer which under the law of Texas, Iowa and Oregon results in a void judgment;

(2) the bar professional responsibility committees of Texas and Iowa did not recommend disbarment, Texas recommended no discipline and dismissal of the proceeding, Iowa recommended a five (5) year suspension with credit for three and one half (3 ½) years;

(3) Iowa and Texas both did not have trial panels for a full opportunity to present evidence, cross examine witnesses, and normal due process.

(4) BR. 3.5 does not meet the Oregon Statutory requirements for equal entitlement with resident lawyers of a "contested case" procedure - no trial panel is provided, the standard and burden of proof is changed, there is no confrontation of witnesses, presentation of evidence or presumption of innocence for a due process - due course of law hearing;

(5) the statutes of limitation in Oregon bar this case proceeding;

(6) Humphreys ineffective assistance of counsel denied him his day in court. These palpable defects violate due process and are exceptions to reciprocal discipline. (In Re Ruffalo, 390 U.S. 544 (1968), (7 Am Jur 2d Attorneys §39, objections above.)

That the Oregon Supreme Court decisions do not set out any findings, nor conclusions of law. The Orders of disbarment and denial of reconsideration were entered without hearing nor presentation of any evidence. The Oregon Supreme Court overruled all objections and the request for hearing.

That this was the third "reciprocal discipline" proceeding (Texas, Iowa and Oregon) contrary to the customary rights and procedures given to resident lawyers. There was no jury trial which is a Texas resident lawyer's right, no trial panel which is an Iowa and Oregon resident lawyers right. There was no discovery, and no burden of proof on the bar. In Oregon no appearances were allowed before the bar committees, and no hearing before the Oregon Supreme Court. That in all cases, the state bar rules at the time of the "reciprocal discipline special proceedings" were followed - not those existing at the time of the alleged misconduct.

REASONS FOR GRANTING WRIT

1. THAT THE OPINION AND PROCEDURE OF THE OREGON SUPREME COURT IN THIS CASE ARE CONTRARY TO THE LAW AS SET OUT BY THIS HONORABLE COURT, THE LAW OF OREGON AND OTHER STATE COURTS.

The Oregon decision conflicts with this court's decisions. In Saenz v. Roe, 526 US 489 (1999). This Honorable Court protected the rights of new residents that traveled to California to receive welfare payments on a basis equal to that of other residents. Not to do so denied them the same privileges and immunities and equal protection enjoyed by other citizens of the same state, violating the 14th Amendment. That same legal precedent applies here. Oregon denied these rights to Petitioner contrary to Saenz. This equality of privilege is what has been taken away here. Justice Bradley in the Slaughter-House cases is quoted:

A citizen of the United States has a perfect constitutional right to go and reside in any State he chooses, and to claim citizenship therein, and an equality of rights with every other citizen; and the whole power of the nation is pledged to sustain him in that right. He is not bound to cringe to any superior, or to pray for any act of grace, as a means of enjoying all the rights and privileges enjoyed by other citizens. (Id at 1526.)

Justice Stevens for the majority continues referring to citizens who have completed their interstate travel stating: "At / 505. But since the right to travel embraces the citizen's right to be treated equally in her new State of residence, the discriminatory classification is itself a penalty".

Chief Justice Rehnquist with Justice Thomas joining, in dissenting agrees that new residents in a state have, "the same rights as other citizens of the state". (Id at 1530).

Justice Thomas with Chief Justice Rehnquist joining in dissent quote: Justice Washington from Corfield v. Corfield, 6 F. Case 546 (No. 3, 230) (CCED PA 1825,):

We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments; and which have, at all times, been enjoyed by the citizens of the several states which compose this Union...What these fundamental principles are, it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads:

Protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole. The right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuits... (Id. at 1537.)

Because I believe that the demise of the Privileges or Immunities Clause has contributed in no small part to the current disarray of our Fourteenth Amendment jurisprudence, I would be open to reevaluating its meaning in an

appropriate case. Before invoking the Clause, however, we should endeavor to understand what the Framers of the Fourteenth Amendment thought that it meant. We should also consider whether the Clause should displace rather than augment, portions of our equal protection and substantive due process jurisprudence. The majority's failure to consider these important questions raises the specter that the Privileges or Immunities Clause will become yet another convenient tool for inventing new rights, limited solely by the "predilections of those who happen at the time to be Members of this Court. (Id. At 1538.) (Emphasis added)

This could be that "appropriate" case that Justice Thomas and this court could reevaluate and "augment, portions of our protection and substantive due process".

Nothing is more basic to the livelihood of our nation as the profession of the practice of law, and the rule of law. We have both here. Petitioner is being denied the practice of law by abandonment of the rule of law by "special proceedings". Should the due process rule of law with it's equal protection and privileges and immunities apply to our profession? Never has Petitioner been disciplined on a complaint by a client in 42 years of practice. No current conduct has been complained of except that back to the eighties based on a judgment in 1991. In Oregon ORS 12.070 states: "an action on a judgment or decree of the United States...shall be commenced within ten (10) years".

It is now over thirteen (13) years since that judgment. It should be barred. ORS 12.130 could be considered in this case as well. It provides: "Action for penalty...shall be commenced within one (1) year after the commission of an

offense. If the action is not commenced...within two (2) years thereafter on behalf of the state..."

The offenses from the 1980's go back as far as twenty two (22) years ago. Oregon has violated it's own statutes and constitution. It obliterates the rule of law here.

The practice of law is a privilege protected by the privileges and immunities clause. (*Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985), *Morrison v No. Carolina Board Bar Examiners*, (E.D. N.C.) No 5.04-C.V.-92-BO (3/9/05) 21 ABA/BNA Lawyers Manual on Professional Conduct

The case of *Theard v. U.S.*, 77 S.Ct.1274 (1957) by the Honorable Justice Frankfurter, for the U.S. Supreme Court should be recalled in considering disbarment,. at page 1276:

Disbarment being the very serious business that it is, ample opportunity must be afforded to show cause why an "Accused" practitioner should not be disbarred...grave reason existed which should continue us that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except upon conviction, that under principles of right and justice, we were constrained to do ... We do not think that the "principles of right and justice" require a federal Court to enforce disbarment of a man eighteen years after he had uttered a forgery."

In our case, the claimed misconduct goes back to 1983 - twenty two (22) years ago with no claims of current misconduct. Considering the circumstances, do the "principles of right and justice" require severe discipline in this case at this

time?!

It has been generally recognized that:

"The consequences of disbarment are so severe, both in degrading an attorney in the eyes of the community and in depriving the attorney a means of livelihood, that it should be ordered only when the misconduct of the attorney may properly be characterized as gross." ...Further, an attorney should be disbarred or suspended only where his or her continuance in the practice will be subversive of the proper administration of justice, or incompatible with a proper respect of the Court for itself or a proper regard for the integrity of the profession..."(7 Am Jur 2d Attorneys §36, citing McLaughlin v. Graves, 73 OR 331).

Humphreys, an honors graduate in Law and Theology, has a current record of service to the profession having just completed a term as Secretary of the OSB CLE Committee, relinquishing the Chair for 2005 due to this Notice, as a volunteer for the OSB Military Assistance Panel, the Appellate Panel for Capital Cases, (currently representing Larry Cole, Murderer); family law volunteer, volunteer attorney for voter protection in the presidential election, lawyer mentioning modest means cases, parental terminations, veterans benefits, and others. He has been a member of the Oregon Trial Lawyers (CLE Committee Volunteer), Oregon Defense Lawyers, and Lane County Bar. He has been Chair of the Oregon Fish and Wildlife Access and Habitat Council Willamette Watershed for two years. He is a priest, ordained in 1997 with an active general practice ministry offering reduced fees for those of modest means with heavy contributions of pro bono services and payments to clients of statutory approved fees of thousands

of dollars. This provides a necessary public service between legal aid and standard fees. There has never been an incident of disrespect to the Courts, the profession or clients; in forty two (42) years). This coterie of compulsory reciprocal decisions first in Texas, then in Iowa and now in Oregon are based upon one another with continuing severity and reliance on the foregoing summary - compulsory - reciprocal discipline all of which lack the normal procedural provisions and rights guaranteed to other lawyers. They did not provide full and fair due process and due course of law hearings. There were all "special proceedings and denied the "Accused lawyer" (Petitioner) rights granted to other lawyers.

2. THIS CASE WOULD ALLOW REVIEW AND SUPERVISORY DIRECTION OF THE LARGE NUMBER OF STATES CHANGING THEIR RULES AS TO MULTI-JURISDICTIONAL LAWYERS AND THE VARIETY OF STATE CASES DEPARTING FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS.

The Oregon Bar Rules of Procedure applied in this case, violate the constitution both in the establishment and the enforcement, abridging the rights to due process, equal protection and privileges and immunities. Similar "reciprocal discipline" rules exist in many states obliterating the rights and privileges of multi-jurisdictional lawyers from resident lawyers.

This case is unique in that three (3) separate jurisdictions all applied the summary mandatory reciprocal penalty based on the conclusiveness not of another full state bar disciplinary proceeding with full due process but rather on required penalties without regard to the individual or the particular facts, from other "reciprocal special proceedings". This case would allow consideration by this court of the multiple bar considerations and how the rule of law applies to the Petitioner and all other multi-jurisdictional lawyers. Basic

disparate treatment by intentional arbitrary discrimination between established residents and new residents or lawyers traveling between states should not be tolerated.

Although, it has been held that states can establish standards for admission and regulation of professionals. (Goldfarb v. Virginia State Bar, 421 US 773 (1995)). This case does not involve competence nor fitness to practice law at this time. No such allegations have been made. It involves different standards, procedures, burdens of proof and waiver of all due process by mandatory summary "special" proceedings different and apart from residents contrary to the usual course of judicial proceedings. It could be called a "star chamber" rule of law; but it does not even rise to that level. It completely ignores due process and the rule of law and Oregon's own statutes and constitution. The express terms of the bar rules and the improper enforcement are intentional arbitrary discrimination!

There is a conflict that exists in the United States concerning the State Supreme Courts decisions as to multi-state lawyer reciprocal discipline. Some automatically, apply a mandatory conclusive summary proceeding as has been done by the multiple jurisdictions in this case. Others do not. (See e.g. Discipline-Attorney's Foreign Conviction, 98 ALR 3d 357, Disbarment or Suspension in other State, 81 ALR 3d 1281; 7 AmJur2d Attorneys at Law Sect. 39; 88). But no other state cases have been found that do not apply the statute of limitations as was done in this case. The Oregon Supreme Court finds no basis in law or fact for it's failure to apply the statutes of limitations. Under all limitation statues the action against Petitioner is barred. In fact, the Oregon Supreme Court makes no findings or legal conclusions to support it's orders.

3. STATE COURTS AND BAR ASSOCIATIONS IN THE UNITED STATES ARE IN CONFLICT CONCERNING

LAWYERS DISCIPLINE IN NORMAL CONTESTED CASES, AS WELL AS, SPECIAL RECIPROCAL PROCEEDINGS AND SHOULD SETTLE THE IMPORTANT FEDERAL QUESTIONS THAT HAVE NOT BEEN RESOLVED.

The states are in disarray over how these "reciprocal discipline" provisions should be applied. They are denoted as "special proceedings" and the multi-jurisdictional lawyers that have traveled from state to state are treated differently from the normal contested disciplinary procedures applied to other resident lawyers.

There is also an uncertain issue because of the different sanctions used from state to state. This is especially true for the death penalty sanction of "disbarment". That is construed differently in different jurisdictions. In some it is a permanent provision, without rights of readmission. Others disbar for a limited time, generally five (5) years; others have not set out the length of time the lawyers profession is denied to him and his/her services denied to the public. There is also the issue of unauthorized practice. What can a disbarred lawyer do for work? Can he provide pro bono services? Can he work as a legal assistant under the supervision of a licensed lawyer for legal aid? This varies from state to state. There is no national arbitrator in these matters except this Honorable Court if a proper case is presented. This is that case!

ABA Model Rule 8.5 on reciprocal discipline and Rule 5.5 on multi-jurisdictional practice was adopted by fourteen (14) states in November, 2004. In twelve (12) other states it is was pending adoption.

A citizen of the United States has a perfect constitutional right to go to and reside in any State he chooses, and to claim citizenship

therein, and an equality of rights with every other citizen; and the whole power of the nation is pledged to sustain him in the right. He is not bound to cringe to any superior, or to pray for any act of grace, as a means of enjoying all the rights and privileges enjoyed by other citizens. (Supra, *Saenz v. Roe*, 521 U.S. 439 (1999))

Do these rules receive ex post facto application to pending matters or do the rules in existence at the time of the alleged conduct warranting discipline apply? Must the statutes of each state be followed for lawyers as they apply to other citizens? Must specific findings and conclusions of law be made before disciplinary orders? (Yes, *In Re Clark*, AZ, No5B-03-0113-D, 4/1/04, 20 Lawyers Manual on Professional Conduct 201.) Is a lawyer entitled to appear at any proceeding and argue and present evidence? Is there any limitation that bars prosecution of an accused lawyer?...

Lawyers should have the basic civil liberties of other citizens. Rules should apply to them equally whether residents or multi-jurisdictional lawyers.

These reciprocal special proceedings are bastard - illegitimate progeny of bar associations restricting the right to work when they become court cases. Are they criminal proceedings in which the "accused" lawyer is entitled to the same rights as accused's in other cases? Are they civil matters with penalties so that *Halper* and *Austin* case - requirements apply? (*Austin v. U.S.* 113 S.Ct 2801 (1991), *Halper v. U.S.* 490 US 435 (1989). Are they civil matters at law, or equity in accord with those laws? They are designated as "sui generis" proceedings by many jurisdictions (OR.BR.1.3). That uncertain classification denies all lawyers - in this case both single resident and multi-resident traveling lawyers there civil rights

and liberties. The rights that all accused lawyers are given in disciplinary case proceedings are uncertain and vary from state to state because of this "sui generis" label so that there is no standard due process across America. It removes all lawyer disciplinary matters from a national rule of law. This Honorable Court is called upon for direction and supervision.

At the time of the alleged misconduct of the Petitioner in the 1980's, in Oregon, "disbarment" meant a five (5) year suspension with right to readmission thereafter. Now, it is considered a permanent prohibition. (BR. 6.1d) This is not based on the time of the alleged misconduct, but instead the date of the filing a Formal Complaint, "An attorney disbarred as a result of a disciplinary proceeding commenced by Formal Complaint after December 31, 1995, shall never be eligible to apply for admission". This is an ex post facto penalty and a bill of attainder prescribing a capital professional penalty of disbarment after the conduct has already occurred with a different penalty. It is prohibited by Art. 1, § 9, CL3, Art 1, §10 CL 1, U.S. Constitution.) In Texas, in 1994, at the time of Petitioner's first mandatory "reciprocal" disbarment it was a five (5) year suspension with right to readmission. But another bar exam was required. In Iowa, the second "reciprocal" disbarment there is no rule on the length of time for readmission. But it is not prohibited. Does the rule at the time of alleged misconduct apply, the time of the first discipline case decision, or the time the other state jurisdictions file the "reciprocal special proceeding"? It should be the law in effect at the time of the alleged misconduct.

Should the sanction of discipline penalty be equivalent from one jurisdiction to the next? If so, what is equivalent in a state in which disbarment means a five (5) year suspension (Texas) and one that is permanent (Oregon)? Here Oregon's new rules apply a permanent disbarment when the reciprocal was a 5-year suspension. The penalty disbarment was increased

after the fact in 1996. An Ex Post Facto rule!

There are then privilege and immunity questions as to every level of the lawyer disciplinary process in every state from investigation, hearing complaint, trial sanctions and reinstatement, but this is especially true for these "special proceedings" in which lawyers traveling from one state to another are subjected to "reciprocal" mandatory discipline without due process and equal protection of the law.

The American Bar Association (ABA) states, 'in practice disciplinary procedures are diverse and jurisdictions do things differently. Lawyer discipline cases are neither civil nor criminal, but a unique type of case whose procedures may be drawn from either civil, criminal or administrative law...)A lawyer's due process right to fair notice of the charges against him was established by the U.S. Supreme Court in *In re Ruffalo*, 390 U.S. 544 (1968). Certain generalizations can be made, and some steps are followed in the majority of jurisdictions. Once a complaint is docketed, discovery is generally available to both the respondent and the disciplinary prosecutor. A trial is held before a judge or an assigned hearing officer; both parties may examine and cross-examine witnesses and introduce documentary evidence. The bar prosecutor has the burden to prove the charges by clear and convincing evidence. Intermediate independent review of the hearing record is afforded prior to consideration by the state's highest court. (ABA/BNA Model Rules of Professional Conduct 101:2101.) (Emphasis added.)

The ABA Model Rules MRLDE Rule 11, comment notes that "fairness requires that no recommendation adverse to the respondent be made without providing him or her an opportunity to be heard. (Id 101:2104.) The lawyer's protection against self incrimination was upheld in *Spevak v. Klein*, 385 US 511 (1967). The right to due process in *In Re Ruffalo*, 390 US 544 (1968). These proceedings may be sui generis but should the definition of due process and due course of law be different for those accused of crimes and accused lawyers?! In *Specht v. Patterson*, 386 US 605, 608-609 87 S.Ct. 1209, 18L Ed2d 326 (1967) states:

"Due process...requires...(3) have an opportunity to be heard (4) be confronted with witnesses against him (5) have the right to cross examine, and (6) to offer evidence in his own behalf, and (7) there must be findings adequate to make appeal meaningful" *Specht*, 386 US @ +610 (See also *DeAngelo v. Schiedler*, 307 OR 91, 94 (1998), Oregon Constitution Art 1, § 12.

The multiple "reciprocal compulsory disciplines" also raise the issue of the double jeopardy clause of the 5th Amendment, U.S. Constitution which prohibits successive prosecutions and multiple punishments for the same offense. (*State v. Cloutier*, 286 OR 579, 585 (1979)

"Civil pleadings may advance punitive, as well as, remedial goals. The notice of punishment cuts across the division between civil and criminal law." (*Austin v. U.S.* 113 S.Ct. 2801 (1993)). A right to a jury trial in normal contested disciplinary matter for resident lawyer is provided in some jurisdiction (See E.G. Texas, Georgia). However, in Texas this Petitioner was denied a jury trial under the special mandatory reciprocal discipline procedure. Just as he was in Oregon denied a trial panel hearing before any agency or court.

In reviewing the customary procedure in lawyer discipline cases the ABA (Supra, ABA/BNA Model Rules 101:2111) states:

After the respondent answers and puts material facts in issue some kind of hearing is afforded in every jurisdiction. In almost half the jurisdictions the local rules of civil procedure govern discovery. (Emphasis added.)

In this case, there was no evidentiary hearing and no discovery. That appears to be the case for all "reciprocal proceedings" contrary to the regular rules of court. The ABA continues: "A majority of jurisdictions considering the question have held, and the MRLDE provide, that disciplinary charges must be proved by clear and convincing evidence".

That is by the burden of proof on the bar. In Oregon for only multi-jurisdictional lawyers that B/P is reversed and placed upon the "Accused". (Oregon does not label the lawyer "respondent" but rather "Accused".) That is the only change in the burden and standards of proof as to lawyers discipline in Oregon - clear denial of equal protection and privilege and immunities of lawyers traveling to Oregon.

Laches and the statute of limitations applies in some jurisdictions but not others. It has been held that the "passage of time affects the fundamental fairness of the proceeding giving rise to a due process violation (*In Re Briggs*, 502 NE 2d 879) (Ind. 1987) *In Re Eisenberg*, 423 NW 2d 867 (Wis. 1988) (Id 101:12113). In our case all the applicable Oregon statutes of limitations barred any legal proceeding against the Petitioner. That entitlement was ignored treating Petitioner disparately from all others.

The present status of many jurisdictions changing their

rules and procedure concerning multi jurisdictional lawyers means it is timely that this court should exercise it's supervisory powers in this developing area of law and jurisprudence so that the rights of our lawyers in the battle fronts of changing rules of law receive equal protection and privileges and immunities wherever they may travel.

CONCLUSION

What good is an ethical rule without a moral application? The core of ethical morality is choosing to do the right thing by acting responsibly and applying the rule and the spirit of the law under constitutional principles. Fair rules require fair and equal enforcement.

The first moral principal is the Golden Rule. It is a basic principle of exchange reciprocity - "do unto others, as you would have them do unto you." In essence, the Golden Rule tells us to ask ourselves, how would I feel if this were done unto me? If you could look at the facts in this matter with that question in mind the unfairness and denial of constitutional rights in the stacked multiple reciprocal reciprocity and its difference from standard disciplinary procedures highlights the abuses inherent within its application in this case.

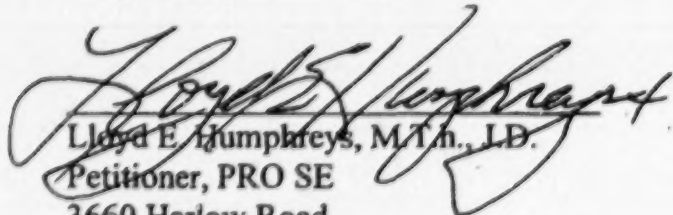
In Matthew 7:1-5 Jesus tells us to be cautious not to cross the line between legitimate enforcement of rules of law and failure to do so. In the Jewish Misnah custom and law ask that we "do not judge your fellow until you are in his position." When you judge man weigh the scales in his favor." (Aboth 1:6, 2:5). I look at that as an ancient rule of law to presume innocence until all the facts are known and full and fair hearing is held. Not the conclusive presumptions and changes of burdens of proof inherent in the limited exceptional case of inequality and prohibited rights in the mandatory reciprocal discipline "special" procedure. When the underlying facts are not known, but punishment is simply multiplied by several

summary conclusive rushes to judgment, in the shadow of doubt of a void judgment without knowing clear details of the underlying facts of conduct, the categorical imperative of the unconditional command of reciprocal discipline punishment without any exceptions creates a blind side to facts and circumstances and multiple punishments without fairness and justice. This is especially true when stacking a series of presumptive summary conclusive orders with never "a day in court," as we know it, a "special procedure contrary to other lawyers subject to disciplinary procedures.

In philosophy and theology, there is a well known fallacy of logic call "*post hoc ergo propter hoc*" literally, "after this, therefore because of this." That is, the reciprocal disciplinary fallacy under the facts of this case. The false choice of reciprocal mandatory conclusiveness that earlier conduct is all bad does not depict the subtleties and nuances of the underlying facts which can be brought out only through full and fair hearing with the traditional rights given to others. That should be the prevailing usual course of judicial disciplinary proceedings across these United States. It is now and it is prayed that this Honorable Court will establish the rule of law.

It is prayed for the foregoing reasons that this petition for Writ of Certiorari be granted.

Respectfully submitted,

A large, stylized handwritten signature in dark ink, which appears to read "Lloyd E. Humphreys". The signature is written over the printed name and title of the signatory.

Lloyd E. Humphreys, M.T.N., I.D.

Petitioner, PRO SE

3660 Harlow Road

Eugene, Oregon 97401

541-484-2825 Telephone

541-484-2826 Facsimile

05 - 53 8 AUG 22 2005

OFFICE OF THE CLERK

In The

Supreme Court of the United States
OCTOBER TERM, 2005

LLOYD EDWIN HUMPHREYS,
Petitioner,

V.

OREGON STATE BAR,
Respondent.

APPENDIX VOLUME I
TO
PETITION FOR WRIT OF CERTIORARI TO THE
OREGON SUPREME COURT

REV. LLOYD E. HUMPHREYS,
M.Th., J.D.
3660 Harlow Road
Eugene, Oregon 97401
541-484-2825 Telephone
541-484-2826 Facsimile
Petitioner, PRO SE

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APPENDIX A

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**IN THE SUPREME COURT OF THE
STATE OF OREGON**

In Re:	)	Oregon State Bar Case
	)	Number: 04-128
Complaint as to the conduct of)	
	)	SC S52070
JUSTUS BUCK HUMPHREYS,)	
	)	ORDER IMPOSING
Accused.	)	RECIPROCAL
	)	DISCIPLINE

Upon consideration by the court.

The Oregon State Bar's recommendation that the accused be disbarred from the practice of law is allowed. Justus Buck Humphreys (OSB No. 80470) is disbarred from the practice of law in Oregon, effective the date of this order. The Bar's motion to strike the supplemental affidavit is denied.

Dated this 8th day of March 2005.

s/
WALLACE P. CARSON, JR.
CHIEF JUSTICE

c: Justus Buck Humphreys
Stacy J. Hankin

APPENDIX B

**IN THE SUPREME COURT OF THE
STATE OF OREGON**

In Re:	)	Oregon State Bar Case
	)	Number: 04-128
Complaint as to the conduct of)	
	)	SC S52070
JUSTUS BUCK HUMPHREYS,)	
	)	ORDER DENYING
Accused.	)	PETITION FOR
	)	RECONSIDERATION

Upon consideration by the court.

The court has considered the petition for reconsideration and orders that it be denied.

Dated this 24th day of May 2005.

s/
WALLACE P. CARSON, JR.
CHIEF JUSTICE

c: Justus Buck Humphreys
Stacy J. Hankin

APPENDIX B 1

**IN THE SUPREME COURT OF THE
STATE OF OREGON**

In Re:	) OSB Case No. 04-128
)
Complaint as to the conduct of)
)
JUSTUS BUCK HUMPHREYS,	) BR 3.5 NOTICE OF
	) DISCIPLINE IN ANOTHER
Accused.	) JURISDICTION AND
<hr/>	) RECOMMENDATION

Notice of Discipline in Another Jurisdiction

Pursuant to Bar Rule (BR) 3.5(a), the Oregon State Bar hereby notifies the Oregon Supreme Court that Justus Buck Humphreys, (hereinafter "the Accused") OSB No. 80470, has been disciplined for misconduct in the states of Texas and Iowa.

In August 1991, the Accused, then known as Lloyd E. Humphreys, was convicted of four counts of felony tax evasion and one count of misdemeanor willful filing of a false tax return. (Copies of Judgments are attached as Exs. 1 and 2) On December 7, 1992, those judgments were affirmed by the

Eighth Circuit Court of Appeals. *United States v. Humphreys*, 982 F2d 254 (8th Cir. 1992) *rehg denied*, January 21, 1993, *cert denied*, 410 US 814 (1993). (Ex. 3)

On March 30, 1994 the Supreme Court of Texas disbarred the Accused for violating Texas Rule of Discipline 8.05. *In the Matter of Lloyd E. Humphreys*, 880 SW2d 402 (Texas 1994) (Ex. 4) In relevant part, that rule provides that when a lawyer has been convicted of an intentional crime, and that conviction becomes final, the lawyer shall be disbarred unless the Board of Disciplinary Appeals suspends the Lawyer's license. (DR 1-102(A)(2) and ORS 9.527(2) are the equivalent Oregon disciplinary rules.)

On November 23, 1994, based upon the above-referenced criminal convictions and other matters, the Supreme Court of Iowa revoked the Accused's license to practice law. *Committee on Professional Ethics v. Humphreys*, 524 NW2d 396 (Iowa 1994). (Ex. 5) In that proceeding the Accused was found to have violated the following Iowa Rules of

Professional Conduct: DR 1-102(A)(3) prohibiting a lawyer from engaging in illegal conduct involving moral turpitude; DR 1-102(A)(4) prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; DR 5-101(A) prohibiting a lawyer from engaging in a self-interest conflict of interest; DR 5-103(B) prohibiting a lawyer from providing financial assistance to a client; DR 5-104(A) prohibiting a lawyer from entering into improper business transactions with a client; and DR 9-102(C) prohibiting a lawyer from improperly commingling funds. (DR 1-102(A)(2), DR 1-102(A)(3), DR 5-101(A), DR 5-103(B), DR 5-104(A) and DR 9-101(A) are the equivalent Oregon disciplinary rules).

Recommendation of the SPRB

At a meeting on November 20, 2004, the Oregon State Bar's State Professional Responsibility Board (SPRB) directed Disciplinary Counsel:

1. To notify the Oregon Supreme Court of the Accused's discipline in the states of Texas and

Iowa; and

2. To advise the court that, under BR 3.5(a), the SPRB recommends that the Accused be disbarred from the practice of law in Oregon.

Discussion

Disbarment is the appropriate sanction where a lawyer engages in serious criminal conduct a necessary element of which includes false swearing, misrepresentation, or fraud. *ABA Standards for Imposing Lawyers Sanctions* (hereinafter "*Standards*") § 5.11(a); *In re Garvey*, 325 Or 34, 932 P2d 549 (1997) (lawyer who committed felony escape, supplying contraband, perjury, and false swearing was disbarred); *In re Leonhardt*, 324 Or 498, 930 P2d 844 (1997) (lawyer who committed forgery, tampering with public records, and official misconduct was disbarred).

Felonious tax evasion or filing of fraudulent tax returns is serious criminal conduct for which disbarment is the appropriate sanction. *In re Hendricks*, 306 Or 574, 761 P2d

519 (1988) (lawyer who was convicted of tax fraud and aiding in the filing of false tax returns was disbarred); *In re Pennington*, 220 Or 343 P2d 774 (1960) (lawyer who, among other things, filed false and fraudulent federal tax returns, was disbarred).

Aggravating circumstances properly attributable to the Accused are: (1) dishonest or selfish motive; *Standards* § 9.22(a); (2) a pattern of misconduct; *Standards* § 9.22(c); (3) multiple offenses, *Standards* § 9.22(d); and (4) substantial experience in the practice of law as the Accused has been a lawyer in Oregon since 1980, *Standards* § 9.22(i).

Mitigating circumstances properly attributable to the Accused are: (1) lack of a prior disciplinary record in Oregon, *Standards* § 9.32(a); and (2) imposition of other penalties as the Accused served jail time and had been disciplined in two other jurisdictions, *Standards* § 9.32(k).

In light of the above, the SPRB believes that disbarment is the appropriate sanction to be imposed upon the Accused

under BR 3.5.

Procedure under BR 3.5

Pursuant to BR 3.5(c), the Accused has the opportunity, within 21 days from the filing of this notice, to file an answer with the court discussing the following issues:

1. Was the procedure in the above-described Texas and Iowa disciplinary proceedings lacking in notice or opportunity to be heard?
2. Should the Accused be disciplined by the Oregon Supreme Court?

Pursuant to BR 3.5(c), the Accused is required to mail a copy of his answer to Disciplinary Counsel and file proof of mailing with the court. Pursuant to BR 3.5(d), the Bar then has 14 days to file a reply to the Accused's answer, assuming an answer is filed. Review by the court thereafter proceeds under BR 3.5 (e).

A copy of BR 3.5 is provided to the Accused with this Notice.

7 B1

DATED this 12th day of January, 2005.

OREGON STATE BAR

By: s/

Stacy J. Hankin, OSB No. 86202
Assistant Disciplinary Counsel

APPENDIX C

Oregon	5200 S.W. Meadows Road, P.O. Box 1689,
State	Lake Oswego, Oregon 97035-0889
Bar	(503) 620-0222 or inside Oregon 1-800-452-8760,
1935	Regulatory Services Fax (503) 968-4457

November 22, 2004

Justus Buck Humphreys, Esq.
Humphreys & Associates
3660 Harlow Rd.
Eugene, OR 97401

Re: Case No. 04-128— Justus "Buck" Humphreys
(Reciprocal Discipline)

Dear Mr. Humphreys:

At its November 20, 2004 meeting, the State Professional Responsibility Board discussed the discipline imposed in Iowa and Texas. I wanted to let you know that the SPRB decided to recommend that the Oregon Supreme Court disbar you as a matter of reciprocal discipline (BR 3.5).

In the next week I will be preparing a notice and other materials for filing with the Oregon court, with copies to you.

Thank you for your cooperation and assistance. Please feel free to contact me with any other comments or questions.

Very truly yours,

s/

Linn D. Davis

Assistant Disciplinary Counsel

Ext/ 332

LDD/rjl

Enclosures (Bar Rules of Procedure)

49-03

IN THE SUPREME Court
OF THE STATE OF OREGON

In Re:)
	) OSB Case No. 04-128
Complaint as to the Conduct of)
	) BR 3.5 ANSWER TO
	) NOTICE OF DISCIPLINE
	) IN ANOTHER
JUSTUS BUCK HUMPHREYS)	JURISDICTION -
	) OBJECTIONS AND
	) AFFIRMATIVE
	) DEFENSES
Accused.)
	) REQUEST FOR TRIAL
	) PANEL & HEARING
_____	) ON NOTICE

Reverend Justus "Buck" Humphreys, M.Th., J.D. with honors¹, who currently resides and maintains his office at 3660 Harlow Road, Eugene, Oregon 97401, in the County of Lane, State of Oregon, Answers the Notice of Discipline in Another Jurisdiction and states objections and affirmative defenses respectfully as follows:

¹
The "Accused" in this case was ordained to the sacred priesthood as an Episcopal priest in August 1998. He was then, as custom and tradition require given the saint's name of "Justus."

STATEMENT OF OBJECTIONS

That the "Accused" files the following objections and requests hearing thereon:

Reciprocal Special Proceeding BR. 3.5 is unconstitutional as a matter of law and facts.

1.

That this proceeding has been filed as a special proceeding under B.R. 3.5. That B.R. 3.5 is contrary to and flies in the face of the statutes, law and constitutions of Oregon and the United States. That as such, it is objected to and should be dismissed or transferred to the standard contested cases formal complaint process provided by B.R. 4 which provides for the administration of resident lawyers in the State of Oregon, with discovery, evidentiary hearing and burden of proof upon the Oregon State Bar (OSB) by clear and convincing evidence. That B.R. 3.5 is applicable only to the Accused and to other lawyers similarly situated that as non residents or members of another bar association have suffered

discipline in another jurisdiction which violates the statutory and constitutional rights of the "Accused" and others in the class of non residents.

That in this case and others similarly situated, the discipline in another jurisdiction was based upon the same mandatory compulsory discipline process without discovery, evidentiary hearing and a burden of proof placed improperly on the Accused with a different standard of evidence and procedure from resident lawyers accused of the same or similar conduct.

BR. 3.5 VIOLATES OREGON STATUTES

3.

That ORS 670.325 (1) provides that:

670.325 Proceedings on denial of license; retraining violations; authority of hearing officers' record of proceedings. (1) All proceedings for the refusal to issue, or the suspension or revocation of any license, certificate of registration or other evidence of authority required to practice any

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profession subject to the authority of a professional licensing or advisory board shall be conducted pursuant to the procedure for contested cases required or authorized by ORS 183.310 to 183.550.

That ORS 183.3102A defines "contested case" as a proceeding:

(2)(a) "Contested case" mean a proceeding before an agency:
(A) In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after an agency hearing at which such specific parties are entitled to appear and be heard;

That ORS 9.527 also requires:

"proper proceedings for that purpose."

That "contested case" and "proper proceedings" authorized and required are not the "special proceeding" provided for in B.R. 3.5 which does not provide for discovery, evidentiary hearing, and switches and modifies the burden of proof on the OSB by clear and convincing evidence; applies only to that class of

lawyers involved with a multiple jurisdiction practice, rather than privilege and equal protection provided in "contested case" proceedings to all resident lawyers accused of the same or similar conduct. (See In Re McD.R.ano, 956 F2d 101 (5th Cir 1992 - requiring a clear and convincing evidence, burden of proof on the bar.)

That this special proceeding under B.R. .3.5 violates the due process clause of the 14th Amendment to the U.S. Constitution as it applies to Oregon, and the "due course of law" that every man shall have pursuant to Art. 1, §, 10 of the Oregon Constitution. That Resident lawyers are favored over non resident and multi jurisdictional attorneys do not have the same rights. That it further violates each and all of the following. Art. 1, Sections 11, (Rights of Accused), 17, (Right to jury trial), 20 (Equality of Privileges and Immunities), 21 (No Ex Post Facto Laws), 33 (Other rights and privileges), Oregon Constitution; U.S. Constitution, Article IV, Section 2 (Privilege and Immunities), Amendments V (Due Process,

Double Jeopardy), VI (Rights of Accused), VII Trial by Jury, VIII No Excessive Punishment, XIV Privileges and Immunities, due process, equal protection, (See also, Piper v. New Hampshire, 470 US 274 (1985)) - holding that the distinction between residents and non residents for admission to the bar is unconstitutional.)

BR. 3.5 EXCEPTION - "NO DAY IN COURT"

5.

Humphreys has not had his "day in Court." That there has been no "opportunity to be heard."

(B.R. 3.5(c)(1)). That the "convictions" and disciplinary proceedings upon which the claims and causes in the Notice of Discipline in Another Jurisdiction (hereinafter referred to as "Notice") are based, were not accomplished with due process and equal protection of the law allowed under the 5th, 6th, and 14th Amendments of the U.S. Constitution and "due course of law", under Articles I, Sections 1, 10, 11, 17, 20, 21, and 33 of the Oregon Constitution. There being no adequate evidentiary hearing and opportunity to offer evidence on the alleged

conduct involved in the 1980's. (Going back to conduct twenty two (22) years ago. (Restatement of Conflict of Laws 2nd §104 - "A judgment rendered without judicial jurisdiction or adequate opportunity to be heard will not be recognized or enforced in another state."))

"CONVICTION" - VOID VERDICT

6.

That the laws of the State of Texas which was the "Accused's" residence at all times material to the 1991 trial (14 years ago) for alleged conduct in the eighties (22 years ago) upon which the underlying "misconduct" and first discipline is based confirm that a verdict of guilty with a dishonorably discharged convicted felon on the jury is a void verdict not entitled to any validity nor "conclusive evidence of guilt." (Texas Criminal Proc. Ann. Art 35.19 (1989), Tweedle v. State, 158 Tex. Crim 200 218 SW2d 846 (1949) See also ORS 10.030 excluding felons as jurors. Restatement of Conflict of Laws 2nd §104 - "A judgment rendered without judicial jurisdiction or adequate opportunity to be heard will not be

recognized or enforced in another state."

DELAY & LACK OF "DUE COURSE OF LAW"
PREJUDICIAL

7.

That the claims and causes in the Notice are untimely, delayed and subject to the defense of laches, as well as, barred by the Oregon statute of limitations. That the alleged conduct involved is from the 1980's up to twenty two (22) years ago and the claims of failing to disclose from 1991 "conviction" (14 years ago) and 1997 (8 years ago) respectively. They further violate Art. 1, Section 10 of the Oregon Constitution in that they do not "...completely and without delay..." allow remedy by due course of law for injury done "to" a person, property, or reputation", both in delay and lack of "due course of law." That the "Accused's" property and liberty interests are involved herein and lack of speedy hearing and trial is presumptively prejudicial to the "Accused", as a matter of law.

BARRED BY STATUTE OF LIMITATIONS

8.

That Oregon provides several statutes of limitations that

show that this action should be barred. This entire proceeding is based upon alleged conduct in the 1980's that were the basis of a United States District Court Judgement in 1991. ORS 12.070 provides:

an action on a judgment or decree of the United States...shall be commenced within ten (10) years.

It is now over thirteen (13) years since that judgment. It should be barred. ORS 12.130 could be considered in this case as well. It provides:

"Action for penalty...shall be commenced within one (1) year after the commission of an offense. If the action is not commenced...within two (2) years thereafter on behalf of the state...

The offenses from the 1980's go back as far as twenty two (22) years ago. If these do not apply then ORS 12.140 would:

"An action for any cause not otherwise provided for shall be commenced within ten (10) years."

It has been more than thirteen (13) years since the conviction for conduct twenty two (22) years ago.

EX POST FACTO LAWS SHOULD NOT APPLY

9.

That in consideration of this Notice and any possible discipline that may be imposed no discipline, or rules of conduct that were established after any of the conduct found to have occurred should be considered or imposed against the "Accused" the same being ex post facto laws in violation of Article 1, §21 and 10 Oregon Constitution. (E.G. Oregon "Disbarment" under law at the time is, a five (5) year suspension not permanent.) "The basis for lawyer discipline is the ethics rules in force in the state **at the time of the conduct...**" (ABA/BNA Lawyers Manual on Professional Conduct 101:2002. i.e. 1980's.)

OREGON POLICY OPPOSES FURTHER DISCIPLINE

10.

That any further disciplinary action against Humphreys violates ORS 137.275 and 137.281 which "eliminates civil

death or disability" in that the civil rights of the "Accused" under Oregon policy have been restored and therefore Art. I §20 Equality of Privileges, Oregon Constitution. (Vasquez v. Courtney, 272 OR 477 (1975)) forbids additional punishment or penalty which would "disable" Humphreys and violate the "Accused's" civil rights entitlement under state policy.

NO COLLATERAL ESTOPPEL

11.

That the basis of B.R. 3.5 consideration of a conviction or the other state's discipline being "conclusive evidence" of guilt is based on the legal doctrine of collateral estoppel. That does not apply in this case! The issues are not identical and were not actually litigated and were not essential to decision on the merits. There was also not a full and fair opportunity to be heard. The state of mind, and elements are different. That is true in both the conviction and the other jurisdiction proceedings. In the other jurisdiction there were no complaints, only copies of the judgment from the Clerk of Court pursuant to Model Standard Rule XIII to Model Rule 19 (ABA/BNA

Lawyers Manual on Professional Responsibility 01:618, 01:708). There was no trial panel evidentiary hearing in which there was a presumption of innocence, burden of proof on the bar, confrontation of witnesses and findings of fact as to conduct. The palpable defects in the conviction are noted elsewhere. This is therefore, a case of exception under B.R. 3.5 because there was no "opportunity to be heard" pursuant to due process and "due course of law", contrary to the equal protection allowed to resident attorneys. That is also true thus far in these proceedings. Application of B.R. 3.5 in our case compounds palpable errors already existing.

12.

That Footnote Number 1, on page 2 of the Notice is objected to in that it prejudicially claims actions which are in dispute, denied unresolved and irrelevant to these proceedings and should be stricken.

13.

The procedure in B.R. 3.5 is also objected to in that the

13 d

issues set out in 3.5c are not adequate under the law, in Oregon and the facts of this case.

14.

Objection is made to any summary interim suspension based on the Notice without full neutral trial panel hearing. There is no claim of "present danger to clients and others if permitted to continue practicing pending final outcome." (Restatement 3rd Law Governing Lawyers (2000) p. 44). Disciplinary counsel makes no such demand for suspension during pendency of disciplinary proceedings under BR 3.1.

ANSWER

COMES NOW THE "Accused" and subject to the above objections and the later stated affirmative defenses for Answer to the Notice of Discipline in Another Jurisdiction states respectfully as follows:

15.

That it is admitted that in August 1991, (14 years ago), the Accused was tried for conduct going back to 1983,

14 d

(22 years ago) in the U.S. District Court in Iowa and convicted by a jury that contained a dishonorably discharged convicted felon of \$14,000 taxes due over a five (5) year period (i.e. \$2,500/year average) on tax returns prepared by C.P.A.'s and staff accountants which Humphreys was guilty of signing.

16.

That it is admitted that the judgment of conviction was affirmed on appeal with the Honorable David Hansen the trial judge then appointed to the Court of Appeals not participating and the Appellate Court found no error in Judge Hansen's rulings when he was trial judge, but criticized Humphreys defense attorney for not taking appropriate action. (Head note 19).

17.

That it is admitted that on or about March 30, 1994, (11 years ago), the Texas Supreme Court applied the reciprocal compulsory mandatory discipline summarily disbaring the

accused without consideration of the underlying conduct and without any evidentiary trial or hearing. That it is affirmatively stated that the Texas State Bar Panel on Professional Responsibility, titled Board on Disciplinary Action (BODA) had dismissed the proceeding recommending no discipline exonerating Humphreys. That had BODA suspended the accused for a short time, rather than completely exonerating him from any misconduct by dismissal no disbarment would have occurred (Texas Rule 8.5). But see, Restatement of Conflict of Laws 2nd §104 - "A judgment rendered without judicial jurisdiction or adequate opportunity to be heard will not be recognized or enforced in another state.") That all specific claims of findings are denied as being without basis in law or fact and not the subject of an evidentiary hearing pursuant to due process, equal protection and privileges and immunities required under the "due course of law."

18.

That it is admitted that on or about November 23, 1994,

(10 years ago) the Iowa Supreme Court treating the case in the same or similar way of the reciprocal compulsory mandatory discipline of Texas and what is proposed herein under B.R. 3.5 disbarred the accused **contrary to the recommendation for suspension by its bar committee.** That all specific claims of findings are denied as being without basis in law or fact and not the subject of an evidentiary hearing pursuant to due process, equal protection and privileges and immunities required under the "due course of law."

AFFIRMATIVE DEFENSES

19.

That the Notice of Discipline in Another Jurisdiction fails to state a claim or cause for which discipline can be imposed.

20.

Humphreys is actually innocent of professional misconduct, and the spurious criminal charges

21.

That the claims and causes in the Notice are untimely,

delayed and barred by the defense of laches and the statutes of limitations. (See paragraphs 7 and 8.)

PRESENTLY FIT TO PRACTICE

22.

Former discipline in another state does not preclude determination that an attorney is fit to practice in Oregon. Many other states have so held. (See E.G. in Re Van Bever, 101 P2d 790 (Ariz 1940), Kentucky Bar v. Signer, 533 SW2d 534 (194. 1976), In Re Weiner, 530 SW 2d 222 (Mo 1975), 547, SW 2d 959) Oregon case law also establishes this Court's individual review and determination whether any sanction is necessary.

"The central inquiry concerns *the present ability* and disposition of the applicant to practice law completely and honestly.: (Restatement 3rd Law of Governing Lawyers, (ALI 2000) § 2 p. 19).

**THAT THE ACCUSED IS COMPETENT & FIT TO
PRACTICE LAW IN OREGON
EXPLANATION - JUSTIFICATION DEFENSE TO
CHARGES**

**LACK OF DUE PROCESS, EQUAL PROTECTION- &
"DUE COURSE OF LAW"**

23.

Humphreys has never had his "day in Court" on the underlying criminal charges. His defense attorney on the third day of a scheduled six (6) week trial in 1991 discovered a juror-dishonorably discharged convicted felon on the jury considering the charges against the Accused a former Judge Advocate General Officer and the first lawyer for the U.S. Army Vietnam. The defense attorney used the trial for discovery purposes allowing collateral-objectionable evidence to be admitted without objection and called only five (5) of twenty two (22) persons on the witness list. Witnesses not called to testify included an expert witness for the defense that sat through the trial, Humphreys office manager, accountants, and others that would show no merit to the charges. All because the defense attorney expected a new trial and any verdict to be void. The trial closed in two weeks rather than the scheduled six (6) weeks. Humphreys was never given a hearing on

ineffective assistance of counsel for post conviction relief. The discovery of the felon juror during trial, by the defense attorney, not subsequent to verdict, was not verified with evidence until a civil legal malpractice suit was brought after appeal and post conviction relief was denied. That new evidence is now available.

DISCUSSION

24.

First, this case must be put into proper perspective. The underlying conduct is that over twenty (20) years ago Humphreys signed tax returns prepared by C.P.A.'s from records supplied by his staff and accountants.

This is a unique case that does not have an analogous case as precedent. Each and every other case that the OSB cites can be distinguished. That each of the cases cited by disciplinary counsel had a trial panel that took evidence concerning the "Accused's" conduct that was involved. The misconduct was either admitted, or not contested, the hearing trial panel found violations of the D.R.'s, and there was little or

no mitigating circumstances. There were no due process problems. That is not the case here!

Due process and equal protection under the XIV Amendment to the U.S. Constitution, and Art. 1, Section 10 "Due Course" and Sections 21, 33 equal protection under the Oregon Constitution are extant in this case in which:

- (1) a felon, dishonorably discharged juror returned a judgment of conviction against Humphreys a former Judge Advocate officer which under the law of Texas, Iowa and Oregon results in a void judgment;
- (2) the bar professional responsibility committees of Texas and Iowa did not recommend disbarment, Texas recommended no discipline and dismissal of the proceeding, Iowa recommended a five (5) year suspension with credit for three and one half (3 ½) years;
- (3) Iowa and Texas both did not have trial panels to allow a full opportunity to present evidence, cross examine witnesses etc.;
- (4) BR. 3.5 does not meet the Oregon statutory requirements

for equal entitlement with resident lawyers of a "contested case" procedure - no trial panel is provided, the standard and burden of proof is changed, there is no confrontation of witnesses, presentation of evidence or presumption of innocence for a due process - due course of law hearing;

(5) the statutes of limitations in Oregon bar this case proceeding.

(6) Humphreys ineffective assistance of counsel denied him his day in Court. These palpable defects violate due process and are exceptions to reciprocal discipline. (In Re Ruffalo, 88 S.Ct 1222 (1968), (7 Am Jur 2d Attorneys §39, objections above.)

Tax evasion is not a charge that always has the same underlying conduct. "Moral turpitude" consists of acts of baseness, violence, or depravity in the duties owed to fellow humans, or society, contrary to the accepted and customary rule of right duty, or acts contrary to justice, modesty or good morals. (7 Am Jur 2d §88 Attorneys at Law).

..."moral turpitude is not necessarily involved in federal

tax evasion, and sometimes an independent showing beyond the fact of conviction is required to show the attorney's conduct (7 Am Jur 2d Attorneys §90.)

In this case, Humphreys has exonerating evidence to show his innocence that was not offered at trial. But even facts at trial do not show moral turpitude or conduct warranting discipline. The record without the exonerating evidence shows Humphreys signed tax returns prepared by C.P.A.'s from records kept by office staff, which the I.R.S. stated were "unusually accurate." It involved less than 5% per cent of his income and was below Department of Justice Guidelines for prosecution. Immediately, on being advised back taxes were claimed, they were immediately paid, under protest. This was not some knowing, wilful, or intentional act that amounted to moral turpitude and destroyed Humphreys fitness to practice law. It did not involve any victim or client! Humphreys has never been sanctioned for violating a duty owed to a client in forty two (42) years, neither before or after the conviction.

The case of Theard v. U.S., 77 S.Ct.1274 (1957) by the Honorable Justice Frankfurter, for the U.S. Supreme Court should be recalled in considering another state Court disbarment. In this case at page 1276:

disbarment being the very serious business that it is, ample opportunity must be afforded to show cause why an "Accused" practitioner should not be disbarred...grave reason existed which should continue us that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except upon conviction, that under principles of right and justice, we were constrained to do ... We do not think that the "principles of right and justice" require a federal Court to enforce disbarment of a man eighteen years after he had uttered a forgery."

In our case, the claimed misconduct goes back to 1983 - twenty two (22) years ago. Considering the circumstances, do the "principles of right and justice" require severe discipline in this case?!

It has been generally recognized that:

"The consequences of disbarment are so severe, both in degrading an attorney in the eyes of the community and in depriving the attorney a means of livelihood, that it should be ordered only when the misconduct of the attorney may properly be characterized as gross." ...Further, an attorney should be disbarred or suspended only where his or her continuance in the practice will be subversive of the proper administration of justice, or incompatible with a proper respect of the Court for itself or a proper regard for the integrity of the profession..." (7 Am Jur 2d Attorneys §36, citing McLaughlin v. Graves, 73 OR 331).

Humphreys has a current record of service to the profession having just completed a term as Secretary of the OSB CLE Committee, relinquishing the Chair for 2005 due to this Notice, as a volunteer for the OSB Military Assistance Panel, the Appellate Panel for Capital Cases, (currently

representing Larry Cole, Murderer); family law volunteer, volunteer attorney for voter protection in the presidential election, lawyer mentioning modest means cases, parental terminations, veterans benefits, and others. He has been a member of the Oregon Trial Lawyers (CLE Committee Volunteer), Oregon Defense Lawyers, and Lane County Bar. He has been Chair of the Oregon Fish and Wildlife Access and Habitat Council Willamette Watershed for two years. He has an active general practice ministry offering reduced fees for those of modest means with heavy contributions of pro bono services and payments to clients of statutory approved fees of thousands of dollars. This provides a necessary public service between legal aid and standard fees. There has never been an incident of disrespect to the Courts, the profession or clients; in forty two (42) years). (See letters from current clients and others.)

SANCTION:

If it is determined that this action is not barred by one

or more of the following:

1. Oregon Statutes of Limitation;
2. That the alleged misconduct in the eighties does not affect his character and fitness to practice law now;
3. That the long delay under the "principles of right and justice" do not require some discipline; in view of the five (5) year plus suspension ('92 - '97).
4. That the legally disallowed convicted felon dishonorably discharged juror does not taint the verdict making the judgement void with no due process and due course of law;
5. That the ineffective assistance of counsel failing to object and failure to offer exonerating evidence violated due process and due course of law.
6. That the failure of Courts in Texas and Iowa to hold trial panel evidentiary hearings to confirm, cross examine witnesses, present evidence with a presumption of innocence and burden of proof on the

bar before imposing sanctions. is an exception to BR 3.5 and other law.

7. That the mandatory reciprocal discipline based on "conclusive evidence" of conviction without considering the conduct involved is inappropriate.
8. That the Oregon procedures and those preceding in Texas and Iowa do deny equal protection of the law by not allowing contested case controversy proceeding with a standard of proof and burden of risk of non persuasion on the bar and others multi jurisdiction lawyers similarly situated from resident lawyers disciplinary proceedings;
9. That the underlying facts in this case do not warrant the same discipline from those of other admitted violators of federal tax laws;
10. That the underlying facts of signing tax returns prepared by C.P.A.'s on records of accountants up to twenty two (22) years ago do not , involve moral

turpitude that does not make Humphreys character and fitness to practice law at this time subject to discipline;

11. That "reciprocal" "mandatory" discipline does not apply in this case because the required elements of collateral estoppel does not apply in this case because the elements of (A) identical issues were not actually litigated; (B) there was not a full and fair opportunity to be heard; and (C) the state of mind and elements involved were different.

12. Considering the cumulative effect of the above together discipline should not be imposed.

13. That at the time of the alleged misconduct Humphreys was not acting in the character of an attorney (The sentencing Court found so.)

In that event this Honorable Court would require a sanction to be imposed at this time, the following should be considered:

CREDIT FOR PREVIOUS SUSPENSION

11.

That if there is any conduct which may be deemed to require discipline, such sanction should take into consideration and give credit for the five (5) years and five (5) months from May 1992 to September 1997, in which the ""Accused"" was suspended. (See, In Re the Matter of Allen, 326 OR 107 (1997), See also, In Re Jaffee, 311 OR 159 (1991)), In Re Walker, 240 OR 65 (1965)). That the five (5) years suspension was equivalent to disbarment in Oregon under the rule existing at that time. That Humphreys did not return to practice in Oregon until 2001. He therefore, did not practice law in Oregon for over eight (8) years from the time of suspension in 1992.

That all alleged conduct and decisions involved in this case were all before January 1996. That B.R. 6.1 sanctions allows a disbarred attorney to apply for reinstatement in five (5) years prior to that time. Now, disbarment is permanent in Oregon. In Texas and Iowa disbarment is not permanent. Reinstatement is allowed in five (5) years so that it was

tantamount to a five (5) year suspension. Humphreys has already been suspended for five (5) years and five (5) months in Oregon.

Under these circumstances and in view of the rules of Oregon in effect prior to 1996 disbarment or further suspension should not be called for. Even under "reciprocal" discipline suspension either for five (5) years, or indefinite until readmission in Texas would generally be the case. (See E.G. Office of Disciplinary Counsel v. Webster, 789 NE2d 191 (Ohio 2003); In Re Breiner, 742 A2d 886 (D.C. 1999); ABA/BNA Manual on Professional Misconduct 101:3001 "In Most Jurisdictions disbarment is not permanent; the disbarred lawyer may apply for readmission after five (5) years.":) In this case, Humphreys has already been suspended for over five (5) years, May 1992 - September 1997. Reciprocal discipline has already been completed!²

OSB claims this suspension was for failure to pay dues or complete CLE requirements. If so, that would be for 30 to 60 days. Humphreys understood at the time it was suspension because of the conviction and did

“Reciprocal” discipline has frequently been imposed throughout the country with the same or less discipline as the other state’s discipline. (See E.G. In Re Ring, 745 A2d 332 (D.C. 2000); In Re Brenier, 742 A2d 886 (D.C. 1999) - 30 day suspension cf indefinite).

The extent of discipline sanctions is discretionary with this Honorable Court. However, it is generally recognized in Oregon that sanctions are not for punishment but for the current protection of public justice and the bar, based on a “balanced consideration of the relevant factors in each case.” (7 ALR 2d Attorneys §36; In Re-Conduct of Brandt, 331 OR 113 (2000); In Re Jim Carpenter, S.Ct.5031 (7/29/04). But disbarment should never be decreed when any less severe discipline would accomplish the purpose (In Re Patterson, 176 F2d 966 (Oregon 1949).

In In Re Complaint as to the Conduct of Jim Carpenter; S.C. §5032 0 (7/29/04); this Court at page 4 states:

not reapply until the OSB advised him he could do so, five (5) years later.

“ T h e r e a r e
 circumstances...when...conduct
 it so divorced from the realm of
 professional conduct that it does
 not necessarily speak to the
 lawyer's conduct and the
 lawyers fitness to practice law to
 establish that the lawyers
 conduct which this Court may
 call the lawyer to answer. If the
 evidence in a discipline case
 does not establish such a nexus,
 then the lawyer is not subject to
 professional discipline...”

The “”Accused””s conduct must be connected rationally to the
 lawyer's fitness to practice law to constitute a violation of D.R.
 1-102 (A)(B) by dishonesty. The Court also states that the
 “”Accused”” “must have acted with a mental state of
 knowledge or intent. See In Re Martin, 328 OR 177 185-6
 (1998).

... the term dishonesty imports
 with it a notice of knowledge
 or intentionality...prior case
 law suggesting knowledge or
 intent is required...

Consequently to violate D.R. 1-102 (A) by dishonesty the
 lawyers conduct must indicate that the lawyer lacks those

characteristics of trustworthiness and integrity that are essential to the practice of law”

This Honorable Court has held that it is the facts and circumstances of each case for federal tax violations that determine whether a case involves moral turpitude. (In Re Walker, 240 OR 65 (1965 - 28 U.S.C. §7203); In Re Corcoran, 215 OR 660 (1959), See also Kentucky State Bar v. Brown, 302 SW 2d 834 (1957-(Dismissed); In Re Moltham, 327 P2d 427 (1958-Washington-Reprimand); In 59 ALR 2d 1397, 1401, “Disbarment-Income Tax Conviction it is stated:

This crime has been viewed most often as not necessarily involving moral turpitude. For this reason courts have required some further or independent showing, beyond the bare fact of conviction for income tax evasion, that the particular conduct in question was infected with moral turpitude before they would impose discipline appropriate to misconduct of that degree, or they have recognized that the respondent might show himself to have been free of moral turpitude

despite his conviction.

In Oregon there is a presumption of innocence in disciplinary matters (In Re Jordan, 295 OR 142 (1983) BR. 3.5 denies that.

In Re Clifford I. Stevenson, 17 DB Rptr. 98 (2003-At Reciprocal 2 years suspended - OR 1 year), In Re James Gress, 17 DB Rptr. 264 (2003-Identical-Reprimand).

Our case requires that the underlying conduct of the “Accused” be considered to determine if it is “so divorced from professional misconduct” and whether it involved knowledge and intent to deceive that is “connected rationally to the lawyers fitness to practice law.” **The sentencing Court finding was that conduct as a lawyer was not involved.** The fact show only the signing of tax return prepared by others that at the worst may have omitted less than five (5) per cent of income. The exonerating evidence not offered at trial proves that is not even the case. The ABA/BNA Manual on Professional Conduct No. 229 (7/18/01) 101-302 states:

"it is the underlying conduct-as opposed to a conviction for such conduct - that forms the basis for ethics violations...that not all criminal conduct violates the ethics rules ..each case must be decided on its own facts." (Citing In Re White, 815 P2d 1257 (OR 1991)).

That the ABA/BNA Lawyer's Manual on Professional Misconduct at 101:306 states: that even if a reciprocal discipline conviction is conclusive proof of a crime and no due process exceptions apply, the Court still has to determine whether this criminal conduct adversely reflected on the lawyer's fitness as a lawyer in violation of (State) rule." It has also been held that conduct may be criminal because of the conviction but not dishonest. (In Re Wofthoski-Shaler, 603 NE 2d 1347, 1348 (Ind. 1992) thus it would not violate the D.R.'s or not be serious.

If a sanction is found to be necessary this Courts procedure is to consider (1) the duty violated; (2) the "Accused"s" mental state-knowing, intentional, or negligent,

(3) actual or potential injury that the misconduct caused. In considering that the reciprocal discipline is based on a conviction for tax evasion and filing a false returns prepared by C.P.A.'s based on staff accountants records not the "Accused's" actions. The records they worked from were according to the I.R.S. "amazingly accurate." His conviction was then for signing the tax returns without checking their accuracy to discover they had omitted less than five (5%) per cent of his income. This was not knowingly or intentionally done but could be considered negligence. No conduct as a lawyer was involved.

Mitigating factors that should be considered in imposing any sanctions are:

1. These allegations of misconduct do not involve professional conduct as an attorney. (Finding sentencing judge.)
2. That no clients or individuals were in any way injured by the alleged misconduct of Humphreys.

3. That the criminal prosecution did not meet the Department of Justice Guidelines for prosecution.
4. That immediately on being advised that any taxes were claimed to be due Humphreys paid them in full under protest so no one was "injured."
5. That the tax returns Humphreys signed giving rise to evasion charges were prepared by C.P.A.'s.
6. That exonerating evidence and testimony at the criminal trial was not presented due to ineffective assistance of counsel finding a felon juror during trial and not objecting timely.
7. That the verdict and conviction with a felon juror are considered void and not entitled to enforcement in other jurisdictions under the Restatement of Conflict of Interests 2nd § 104 and the law of many jurisdictions and the law of collateral estoppel.
8. The lack of due process and "due course of law" surrounding the conviction with a dishonorably

discharged felon juror judging a former JAG officer;

9. That the “Accused” did not misrepresent the facts to the Courts by accepting a plea bargain to one charge, nor did he lie to accept responsibility for a lighter penalty or less discipline.
10. That in 42 years of practice no client has ever filed a complaint for which Humphreys has been disciplined. ABA Standard 9.32(a).
11. That there is no record of any prior discipline of any kind (Id.)
12. That no one filed a complaint, and no lawyers, or judge reported or disclosed any misconduct to any bar association that raised a “substantial question as to Humphreys honesty, trustworthiness, character or fitness to practice law from the conduct involved in the conduct involved in the conviction.
13. That the “Accused” made a full and free disclosure of background information with a cooperative attitude

with disciplinary counsel;

14. That there is a significant factor of delay the alleged misconduct occurring in the eighties, as long as, 22 years ago. (ABA Standard 9.32) (In Re Unrkin, 323 OR 285 (1996-Delay of 4 years))
15. Aberrant acts not part of a pattern or scheme (Trial Court finding of fact no pattern or scheme of conduct and no conduct as a lawyer.);
16. Present moral fitness and possibly extent of rehabilitation (ordained to priesthood August, 1998);
17. No disciplinary conduct since disbarment or before;
18. Current competency and qualifications to practice law. (As an officer and member of the OSB and OTLA CLE committees, Humphreys attended and received credit for one hundred and thirty (130) - CLE hours in the last two (2) years.
19. Complete restitution and payment of all taxes, costs and expenses of conviction.

20. Proof that the continuing practice of law would not be detrimental to the public or the bar (See letters of current clients);
21. Imposition of other penalties and completed five (5) years five (5) month suspension in Oregon.

In contrast to the above mitigating circumstances disciplinary counsel has claimed aggravating circumstances of:

1. A dishonest selfish motive (contra to the facts of the underlying conduct, the amounts involved, and the lack of knowing or intentional misconduct);
2. Pattern of misconduct - (contra to the finding of fact by the sentencing Court that no scheme was involved);
3. Multiple offenses (contra void verdict on which judgment was based not on actual conduct) and exonerating evidence not presented shows innocence;
4. Substantial experience in the practice of law. (This is admitted but is objected to as an aggravating factor under the circumstances and the sentencing Courts

finding that no conduct as a lawyer was involved. The many years of service without prior misconduct discipline should be mitigating not aggravating. Further, this is not appropriate where no conduct as a lawyer was involved.)

WHEREFORE the ""Accused"" prays that this Honorable Court "pity the poor widow's son," with the following action by:

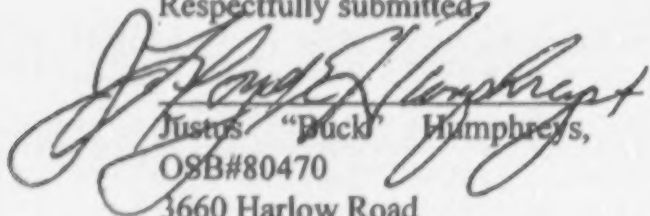
1. Apply the "due course of law" by dismissal of these proceedings;
2. Find the ""Accused" is entitled to a regular "contested case" proceeding without summarily interim suspension;
3. Find that if misconduct be proved that it is not pertinent to the ""Accused""s" present good moral character and fitness to practice law;
4. That if disciplinary sanction be imposed to credit the five (5) years suspension and find no further sanction is

necessary;

5. That should the imposition of some sanction be necessary consider change from active status to pro bono status for some period of time to allow the "Accused" to continue to meet the needs of those modest means clients which require his services. It is the clients who will suffer the most; and/or
6. For such other relief as may be just and fair under the circumstances.

Dated this 3rd day of February, 2005.

Respectfully submitted,



Justus "Buck" Humphreys,

OSB#80470

3660 Harlow Road

Eugene, OR 97401

541-484-2825 Telephone

541-484-2826 Facsimile

ANSWER TO NOTICE-EXHIBIT LIST

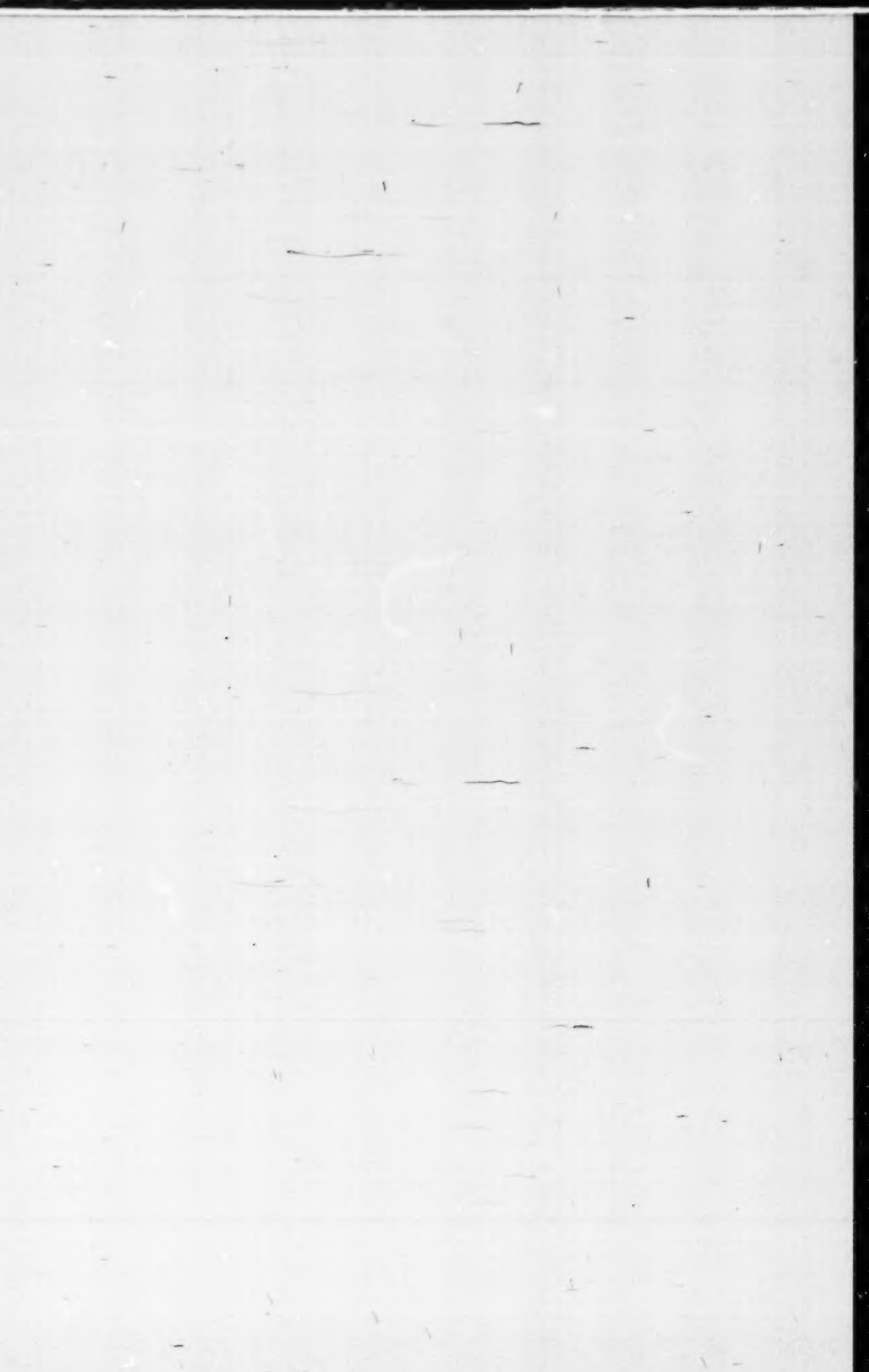
1. Sentencing Findings - no conduct as a lawyer/noscheme or pattern

2. Clerk of Court's certification conviction sent to other jurisdictions - TX, IA, OR; 12/91
3. Model Federal Rules of Disciplinary Enforcement (ABA/NBA) - duty of clerk and judge to notify other jurisdictions - reinstate 5 years after disbar
4. ABA Lawyer Disciplinary Enforcement Rules, Rule 25 - Notices
5. IA Committee on Professional Ethics, page 1 CPEC suspension not disbar
6. TX-BODA (Board of Disciplinary Appeals) - Dismissal - No Discipline
7. Lloyd E. Humphreys & Humphreys & Associates Law Firm, P.C. v. Charles Meadow; Petition For Writ of Certiorari - ineffective counsel
8. Lloyd E. Humphreys & Humphreys & Associates Law Firm, P.C. v. Charles Meadows; Appendix to Petition for Writ of Certiorari - shows "smoking gun"
9. Lloyd Edwin Humphreys v. United States of America; Petition for Writ of Certiorari
10. Affidavits and letters Bruce Steffans, Jim Smith, Debbie Smith and daughter - shows full records presentation no ethics violation - conflict funds advance
11. Affidavits Tax Preparers - C.P.A.'s and

invoices - shows no evasion

12. Question and Answer of C.P.A. to I.R.S.; tax losses; affidavits Dr. and Mrs. Motley - (deduction over \$20,000 not taken) no taxes owed
13. 1985 US Master Tax Guide - property settlement "alimony" deduction - shows property settlements were deduction
14. Phillips Polygraph Service Test - exonerating - by law enforcement expert officer - authority on use and accuracy
15. Affidavits of employees - confirm exoneration
16. Payment of taxes - prior to conviction and cost - no injury
17. Senator Mark O. Hatfield, letter of recommendation, et al.
18. Religious work and outreach
19. Letters of recommendation by current clients
20. Resume
21. OSB Certificate of Appreciation Military Assistance Panel
22. OSB Certificate of Appreciation Continuing Legal Education Committee

(Exhibits not in Appendix.)



05-538 AUG 22 2005

OFFICE OF THE CLERK

In The

Supreme Court of the United States
OCTOBER TERM, 2005

LLOYD EDWIN HUMPHREYS,
Petitioner,

V.

OREGON STATE BAR,
Respondent.

APPENDIX VOLUME II
TO
PETITION FOR WRIT OF CERTIORARI TO THE
OREGON SUPREME COURT

REV. LLOYD E. HUMPHREYS,
M.Th., J.D.
3660 Harlow Road
Eugene, Oregon 97401
541-484-2825 Telephone
541-484-2826 Facsimile
Petitioner, PRO SE

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APPENDIX E
MOTION FOR RECONSIDERATION
I. INTRODUCTION

A. NATURE OF ACTION:

Justus "Buck" Humphreys, was a member of the Oregon State Bar since 1980, the Texas State Bar since 1987, and the Iowa State Bar since 1962. In 1991, he was convicted of federal tax offenses allegedly occurring in the 1980's for total taxes due of \$22,000, by a jury with a dishonorably discharged felon. The federal clerk sent copies of the convictions to the state bars. The Texas Bar found the conviction to be a void judgment because of the illegal juror and recommended no discipline. *No jury trial or trial panel was held.* The Texas Supreme Court in 1994 found compulsory reciprocal discipline was mandatory on conviction and disbarred for a five year period.¹ The Iowa and Oregon Bars suspended Humphreys within six (6) months of conviction. In 1994 following Texas Court ruling Iowa recommended a reciprocal five year suspension with credit for the temporary suspension. *No trial panel hearing was held.* Humphreys residing in Texas since 1987 accepted the suspension and did not oppose it at the Iowa Supreme Court. The court disbarred Humphreys but disbarment was not permanent. Humphreys was reinstated in Oregon after five (5) years. (1992-1997). The Oregon State Bar filed a notice of discipline in another jurisdiction January 12, 2005. The State Professional Responsibility Board (SPRB) held a *private* conference with OSB Disciplinary counsel in November, 2004 and in considering the *confidential* report of disciplinary counsel recommended disbarment pursuant to B.R. 3.5. *No*

1

Similar to the Oregon former BR 6.1(e) disbarment rule in effect until (12/14/96).

Oregon local professional responsibility committee, nor trial panel was appointed.

B. **NATURE OF OREGON SUPREME COURT ORDER:**

The Oregon Supreme Court *without hearing* entered an, "Order Imposing Reciprocal Discipline" allowing the SPRB's recommendation of disbarment.

II. PETITION FOR RECONSIDERATION

TO : THE HONORABLE WALLACE P. CARSON, JR,
CHIEF JUSTICE AND THE ASSOCIATE JUSTICES,
WILLIAM R. RIGGS, MICHAEL W. GILLETTE,
ROBERT D. DURHAM, PAUL J. DEMUNIZ, RIVES
KISTLER, THOMAS BALMER.

A. **INTRODUCTION-GROUNDS FOR RECONSIDERATION:**

B. Humphreys petitions the court for reconsideration of it's March 8, 2005, Order Imposing Reciprocal Discipline of Disbarment without hearing, or referral to a trial panel.

The summary rush to judgment allowing the *mandatory* recommendation of the State Professional Responsibility Board has led the scales of justice not being properly balanced with the facts in order to properly apply the rule of law. Humphreys constitutional rights to the due course of law, due process, equal protection, and privileges and immunities have been violated by the errors and omissions built into the compulsory discipline process.

Humphreys respectfully seeks a reconsideration and examination of the record herein and hearing whereby

petitioner will be able to assist this Honorable Court better to examine and understand the circumstances which will result in a revision and reversal of the order; and a miscarriage of justice will occur if the order herein is not reversed based on the following grounds:

1. The protection of the constitutions of Oregon and United States gives it's citizens to equal protection, due process, and due course of law, double jeopardy, and privileges and immunities, which should apply here (*Lowe v. City of Eugene*, 254 OR 535 (1969).
2. Facts and circumstances that were not given full and careful consideration (*Ward v. Ward*, 156 OR 686).
3. To correct mistakes and consider misapprehensions. (*Kentner v. Gulf Insurance*, 298 OR 69, *Fleming v. United Services, Auto Assn*, 330 OR 62.)

That these grounds are so material that if corrected it would result in a substantial alteration or change in the order of 3/8/05 to promote substantial justice.

B. STATE PROFESSIONAL RESPONSIBILITY BOARD "STAR CHAMBER":

Oregon rules and practice go further in denying the Accused *non-resident* lawyer his civil constitutional rights under the rule of law. B.R. 2.5 as to review by the State Professional Responsibility Board (SPRB) requires that for *resident* lawyers, "if the attorney furnishes a response from which disciplinary counsel determines that misconduct be involved. The Complaint shall be referred...to an appropriate LPRC (Local Professional Responsibility Committee) for further investigation or...to the SPRB...the SPRB shall evaluate the Complaint based on the report of disciplinary counsel (i.e.

in secret without the Accused's presence, knowledge of the report, or opportunity to respond.)² The Accused was advised that the SPRB was similar to a grand jury meeting in secret with the Accused refused attendance. This is more like a classic "Star Chamber" proceeding. **This was the procedure used in this case. There was no hearing with argument or evidentiary trial panel procedures as allowed in normal contested cases.**

ORS 9.534 expressly provides:

- (1) The Supreme court shall appoint a disciplinary board to hear formal charges against members of the Bar...
- (2) A member, formally Accused of misconduct by the Bar, **shall be given ... a reasonable opportunity to defend against charges...the right to examine and cross examine witnesses.** The member shall also have the right to appear and testify, and the right to the issuance of subpoenas...production...documents.

No such opportunity has been given to Humphreys!

ORS 670.325 in the "occupations and professions" generally Chapter of the Oregon Statutes specifically provides that "suspension or revocation of any license...shall be conducted pursuant to the procedure for contested cases..." B.R. 3.5 is an improper exception as a "special proceeding" to that statute that denies non resident lawyers the rights and

In this case, the Accused was refused admission to the SPRB meeting, refused some of the information provided the SPRB in writing and orally, and given no opportunity to respond to the secret ex parte communications of disciplinary counsel to the SPRB and denied the right to present evidence, confront witnesses, or cross examine.

privileges granted to resident lawyers Accused of similar conduct in violation of ORS 183.310(2)(a), A, C, .310(2)(A)A.C., as well as, the constitutional rights to equal protection, privileges and immunities, due process and due course of law.

The general conduct of lawyer discipline in the United States has

“some steps followed in the majority of jurisdictions...a trial is held before a judge or an assigned hearing officer, both parties may examine and cross examine witnesses and introduce documentary evidence. The Bar prosecutor has the burden to prove the charges by clear and convincing evidence. Intermediate independent review of the hearing record is afforded prior to consideration by the State’s highest court.” ABA, BNI, Manual on Professional Misconduct, 101:2101, and 2001

None of these were done in any jurisdiction considering this matter. A coterie of compulsory reciprocal discipline decisions first in Texas, then in Iowa and now Oregon are based upon one another with continuing severity and reliance on the foregoing summary - compulsory - reciprocal discipline all of which lack the normal procedural provisions and rights guaranteed to other lawyers. They did not provide full and fair due process and due course of law hearings! They were all “special proceedings and denying the “Accused lawyer” rights granted to other lawyers.

It has been recognized in Oregon that there is a right to an impartial jury or trial panel, and that federal due process under the 6th Amendment and the Oregon Constitution Art. 1 §

11 embodies a 'fairness' standard. (*State v. Merrell*, 170 OR App 400, rev den. 331 OR 674 (2000).

These proceedings may be sui generis but should the definition of due process and due course of law be different for those accused of crimes and accused lawyers?! In *Specht v. Patterson*, 386 US 605, 608-609 87 S.Ct. 1209, 18L Ed2d 326 (1967) states:

"Due process...requires...(3) have an opportunity to be heard (4) be confronted with witnesses against him (5) have the right to cross examine, and (6) to offer evidence in his own behalf, and (7) there must be findings adequate to make appeal meaningful" *Specht*, 386 US @ +610 (See also *DeAngelo v. Schiedler*, 307 OR 91, 94 (1998); Oregon Constitution Art 1, § 12.

The multiple "reciprocal compulsory disciplines" also raise the issue of the double jeopardy clause of the 5th Amendment, U.S. Constitution which prohibits successive prosecutions and multiple punishments for the same offense. (*State v. Cloutier*, 286 OR 579, 585 (1979)

"Civil pleadings may advance punitive, as well as, remedial goals. The notice of punishment cuts across the division between civil and criminal law." (*Austin v. U.S.* 113 S.Ct. 2801 (1993)).

C. NO DISCRETION IN SPRB RECIPROCAL RECOMMENDATION:

The SPRB then under B.R. 3.5a reciprocal discipline is required to *mandatorily* recommend, "the imposition of discipline in Oregon based on the discipline in the jurisdiction whose action is reported to the court." The SPRB then after secret hearing and esoteric evidence by disciplinary counsel

without the Accused lawyers presence or opportunity for rebuttal cannot independently make a favorable decision not to go forward with the discipline...

"The judgment...shall be accompanied by a recommendation of the SPRB as to the imposition of discipline in Oregon *based on the jurisdiction whose action is reported...*"

The SPRB made that *mandatory* required compulsory recommendation in this case for disbarment. It was not the result of an independent evidentiary hearing with the participation of the Accused!

D. **SPRB RECOMMENDATION WAS EXCESSIVE AND VIOLATED BAR RULES:**

1. **Not current Ex Post Facto rule** - the SPRB disbarment sanction recommendation in this case is also wrong due to the change in B.R. 6.1(e). The former disbarment in Oregon was for a five (5) year period. It is that five (5) year period with reinstatement thereafter that was in effect at all times material hereto - i.e. in the 1980's when the alleged taxes weren't paid and in 1991 at the time of conviction, and in 1992 when Oregon suspended him for five (5) years. The discipline recommended at that time required is reported as, "should be a five (5) year suspension"³ - not a permanent disbarment under the new rule. That is an ex post facto rule. Oregon has precedent to apply the law and rules in affect at the time of the alleged misconduct, not the ex post facto rule. (See e.g. *In Re Osiris*, 40 P3d 500 (2002), *In Re Gatti*, 330 OR 517, (2000)), OSB Legal Ethics OP. No 2000-161, Accord, *In Re Welker*, Utah No 26030428 10/15/04, 20 Lawyer's Manual on

³ Which was already imposed.

Professional Conduct 547 (11/13/04).

"The basis for lawyer discipline is the ethics rule in force in the state at the time of the conduct."⁴

There is a duty recognized on the judiciary not to disbar, except when constrained to do so under principles of right and justice. That an ample opportunity must be afforded to show cause why an accused lawyer should not be disbarred. *Theard v. U.S.* 77 S. Ct. 1274, 354 U.S. 279 (1957).

An accused lawyer in disciplinary proceedings is presumed innocent *In Re Jordan*, 295 OR 42 (1983), *In Re Egan* 11 DBR 208, 210 (1997); except under the reciprocal "special proceeding."

A lawyer accused of a crime committed in a private capacity when there is not doubt as to his guilt should still not be disbarred summarily. The complaint was dismissed *Ex Parte Cowing*, 26 OR 572, 38 P1090 (1895), an old but still valid precedent!

A lawyer who was given no opportunity for a hearing on the Board of Governor's decision to disbar him was reinstated and suspended. *In Re Ronchetto*, 202 OR 410 (1954).

Disciplinary proceedings involving a lawyer who has switched to inactive status after tax problems arose were deferred until the lawyer sought reinstatement. The lawyer was given a two (2) year suspension from the date disciplinary

4

I.E. the 1980's back to twenty three (23) years ago. There was no reciprocal discipline provision at that time. ABA, BNI Manual on Professional Discipline Section 101:2002.

proceedings could have been concluded, automatic reinstatement and one (1) year probation *In Re Walker*, 240 OR 284, (1965).

"A State cannot exclude a person from the practice of law,...in a manner, or for reasons that contravene the due process or equal protection clause of the 14th Amendment." *Schwartz v. BD Bar Examiners*, 353 US 232, (1957).

2. **CHOICE OF LAW RULE REQUIRES DISMISSAL OR REDUCED SANCTION:**

B.R. 1.4 Establishes the choice of law. Under the rule that would be the State of Texas where Humphreys resided and maintained his practice from 1987 to 1994, all times material hereto.

Under Texas law the criminal conviction was void and of no effect. (Notice Exhibit.) Texas law also provides two other rules applicable here. One is Texas Civil Code 16.051 and Government Code 15.00A statutes of limitations of four (4) years to bring petitions on disciplinary matters. The other is that disbarment allows reinstatement after five (5) years.

If B.R. 1.4 is applied in this, as it should be under Oregon rules, the conviction upon which all reciprocal discipline is based is void and of no effect, a petition for discipline would have had to be filed within four (4) years or by 1995 and the sanction, if any, would be suspension for five (5) years.³

Which already took place in Oregon from 1992 - 1995). It should also be reported that the documents attached to the supplemental affidavit

E. IMPROPER BURDEN OF PROOF SWITCHED FROM BAR TO ACCUSED:

Disciplinary proceedings usually require a high burden of proof on the disciplinary counsel that is clear and convincing. B.R. 5.2 requires that in all resident lawyers local disciplinary proceedings. However, B.R. 3.5 (f) reverses that burden of proof and imposes it on the Accused lawyer practicing in multiple jurisdictions. It is also generally recognized in Oregon that an Accused lawyer who has a Complaint filed against him is innocent until the trial panel's hearing is complete and findings made. Under B.R. 3.5 (b) "reciprocal discipline that classic American presumption of innocence is reversed and a judgment from a different jurisdiction in a case with different laws, procedures and different issues is "sufficient evidence of misconduct" and "that the attorney committed the misconduct." This violates the equal protection, privileges, immunities, due course of law, and due process rights.

F. THE COMPLAINT FAILS TO STATE A CLAIM FOR DISCIPLINE:

That the privileges and immunities, and equal protection clauses of the Oregon Constitution require that the Respondent and other attorneys similarly situated are entitled to the same rights, benefits, privileges and immunities of other citizens under the equal protection of the law. That attorneys under reciprocal "special proceedings" should also be entitled to the same rights as other attorneys in discipline proceedings. That Oregon does not have a "due process" clause within it's constitution. But the 14th Amendment of the United States Constitution requires certain legal due process in the State of Oregon. The "due course of law" provision of Art. 1 §10 of the

herein were just obtained from the OSB in January, 2005, and it was first learned that the OSB did not request a federal criminal check.

Oregon Constitution requires similar proceedings.

The stale claims set out in the Complaint concern alleged conduct far in the past by the Respondent well beyond any statute of limitation or repose that allows them. **That no question of current conduct, character, attribute, or fitness of the Respondent is claimed by disciplinary counsel.** There is not now and has never been a complaint from a client or attorney for which I have been disciplined in forty two (42) years. You disbar me and in a resident lawyers case with over 117 complaints from clients and other attorneys he is suspended. (See Knappenberger, Supreme Court No. 549996 (2005)).

That it is well recognized that the rules and discipline to which lawyers are subjected is not prosecuted for punishment, or even deterrent. Instead, it is to determine the present character and fitness of the lawyer involved to be in the best interests of the public and the bar to continue practicing law (see letters attached). No allegations to that effect have been made in the Complaint. There is no "substantial question" raised as to the current "honesty, trustworthiness, or fitness" of the Respondent in the Complaint. The Complaint does not state a claim upon which disbarment or discipline should be based.

G. **"SPECIAL PROCEEDINGS" DISCIPLINE-APPLICATION:**

What good is an ethical rule without a moral application? The core of ethical morality is choosing to do the right thing by acting responsibly and applying the rule and the spirit of the law under constitutional principles. Fair rules require fair and equal enforcement.

The first moral principal is the Golden Rule. It is a basic principle of exchange reciprocity - "do unto others, as you

would have them do unto you." In essence, the Golden Rule tells us to ask ourselves, how would I feel if this were done unto me? If you could look at the facts in this matter with that question in mind the unfairness and denial of constitutional rights in the stacked multiple reciprocal reciprocity and its difference from standard disciplinary procedures highlights the abuses inherent within its application in this case.

In Matthew 7:1-5 Jesus tells us to be cautious not to cross the line between legitimate enforcement of rules of law and failure to do so. In the Jewish Misnah custom and law ask that we "don not judge your fellow until you are in his position." When you judge man weigh the scales in his favor." (Aboth 1:6, 2:5). I look at that as an ancient rule of law to presume innocence until all the facts are known and full and fair hearing is held. Not the conclusive presumptions and changes of burdens of proof inherent in the limited exceptional case of inequality and prohibited rights in the mandatory reciprocal discipline "special" procedure. When the underlying facts are not known, but punishment is simply multiplied by several summary conclusive rushes to judgment, in the shadow of doubt of a void judgment without knowing clear details of the underlying facts of conduct, the categorical imperative of the unconditional command of reciprocal discipline punishment without any exceptions creates a blind side to facts and circumstances and multiple punishments without fairness and justice. This is especially true when stacking a series of presumptive summary conclusive orders with never "a day in court," as we know it, a "special procedure contrary to other lawyers subject to disciplinary procedures.

In philosophy and theology, there is a well known fallacy of logic call "*post hoc ergo propter hoc*" literally, "after this, therefore because of this." That is, the reciprocal disciplinary fallacy under the facts of this case. The false choice of reciprocal mandatory conclusiveness that earlier

conduct is all bad does not depict the subtleties and nuances of the underlying facts which can be brought out only through full and fair hearing with the traditional rights given to others.

H. BACKGROUND FACTS CRIMINAL CASE - NOT FULLY LITIGATED:

This court has evidence before it that the Texas, Iowa and the United States Court did not all have! In particular, the "smoking gun" which establishes the criminal defense attorney's knowledge of the dishonorably discharged felon juror occurred not subsequent to the guilty verdict as the criminal court record and appellate decision understood, but the third day of an expected six (6) week trial is set out.⁶ Exhibit 8 of the Answer to Notice is the Appendix to the Petition For Writ of Certiorari to the U.S. Supreme Court in December, 2001.

That is ten (10) years after the questionable conviction. The bill and statement of services of the expert witness attending trial everyday in order to testify for the defense.⁷ That statement at pages 59 - 61 was obtained through discovery in the civil suit against the criminal defense counsel after appeals and disciplinary proceedings in Texas and Iowa. It verifies that in mid-trial the information on the

6

Head note 16 p 7 US v. Lloyd E. Humphreys "subsequent to the entry of verdict Humphreys discovered that the juror (felon) rights had not been restored." That assumption on appeal was wrong. Defense counsel found out during trial.

7

He was not called as a defense witness along with nineteen (19) others on the witness list filed with the court because defense counsel was reserving them for a full defense on the second trial he expected because of the felon juror discovered after three (3) days of trial. (See Exhibits 11, 13, 15 of Answer for evidence of innocence by witnesses not called by defense.)

dishonorably discharged-felon juror was obtained. (Attached hereto). It was then defense counsel cut short the defense of Humphreys and used the trial for discovery allowing evidence in without objection and resting after one and a half weeks of trial instead of the scheduled six (6) weeks without calling as witnesses the retained, trial attending expert, the office manager, and others that could have exonerated Humphreys.⁸ It was not a fully litigated case in the "due course of law." Does not this shortfall by ineffective defense counsel deny due process and obstruct justice?!

It has been recognized in Oregon that ineffective assistance of counsel to the prejudice of a defendant should be considered in reviewing the due process and due course of law. (See E.G. *Trujill v. Maas*, 312 OR 431, 435, *Williamson v. Schiedle*, 2004 WL 26 770030 OR, 11/24/04.

I. **BACKGROUND FACTS - GENERAL:**

Thank you for the opportunity to practice law here in Oregon. I have been a member of the Oregon Bar since 1980. I was first admitted to practice in 1962 - forty two (42) years ago. I received a regular Army commission as a distinguished military graduate after graduating from law school with honors and was the first and only⁹ "Judge Advocate Lawyer with the United States Army Vietnam. When John F. Kennedy was assassinated. I was officer of the guard and was warned of an attack on our flag. My squad and I with guns at ready were

8

-Exhibit 7 attached to Answer contains the undisputed facts p 8-12 and argument on defense counsel's ineffectiveness-attached in Appendix.

9

In 1965, when I volunteered from Paris, France to go to Nam there were only 35,000 troops for the first six (6) months as they built up to 350,000 I was alone in country to help maintain the rule of law. My cancers are considered to have been caused by exposure to Agent Orange.

fully prepared to die in defense of our flag. During the decades of legal practice that followed I worked hard to maintain the rule of law that we had fought for. Later, I attended seminary at Southern Methodist University and was ordained to the sacred priesthood in 1998, a year after reinstatement here. I was called to be a Senior Pastor at a small traditional Episcopal church. I preached and led by example to maintain the rules of morality of God's laws.

Between 1992 and 2000 I contracted three different forms of cancer - carcinoma (four (4) times), melanoma, and cancer of the base of tongue. This was the time I received word I could apply for reinstatement in Oregon and did so. The tongue cancer metastasized to the lymph nodes of the neck and I was forced to give up the church after three (3) years. After radiation that destroyed the cancer, my thyroid and pituitary glands in my neck I was to have surgery to remove the jugular vein and left side of my neck. An hour before surgery it was decided to waive the surgery. I came to Oregon the "promised land" I had loved, to recuperate and help people maintain their legal rights and religion. My pain allowed me to better appreciate others, making me a better lawyer. I now ask you to allow me the same constitutional rights of any resident lawyer with a trial panel and appropriate procedure.

I bring this background to your attention so that you understand that the rule of the law and ethical morality is of the utmost importance to me and I simply ask for you to extend to me what I have fought in war and court for over four (4) decades for our country.

III. CONCLUSION

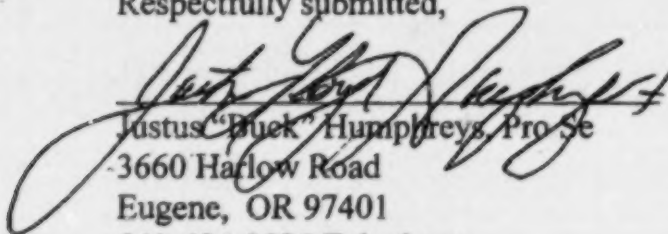
That for the reasons above and those set out in the Answer to Notice, Humphreys petitions the court for mercy to reconsider it's March 8, 2005, Order, and prays this Honorable

Court will:

- 1) dismiss the proceeding, or
- 2) reduce the sanction, or suspend until reinstated in Texas, or at a minimum grant the same rights and privileges that a resident lawyer would have to include hearing, appointment of a trial panel, and/or disciplinary board evidentiary hearing in accord with the "due course of law," and;
- 3) such other procedure as may be fair and just under the circumstances.

DATED March 28, 2005.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Justus Buck Humphreys', is written over the printed name and address.

Justus "Buck" Humphreys, Pro Se

3660 Harlow Road

Eugene, OR 97401

541-484-2825 Telephone

541-484-2826 Facsimile

Appendix F**OREGON STATUTES**

12.070 Action on judgment, decree or sealed instrument. (1) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States; or

(2) An action upon a sealed instrument entered into before August 13, 1965, shall be commenced within 10 years. [Amended by 1965 c.502 §3]

12.130 Action for Penalty. An action upon a statute for a penalty given in whole or in part to the person who will prosecute for the same, shall be commenced within one year after the commission of the offense; and if the action is not commenced within one year by a private party, it may be commenced within two years thereafter, in behalf of the state, by the district attorney of the county where the offense was committed or is triable.

12.140 Actions not otherwise provided for. An action for any cause not otherwise provided for shall be commenced within 10 years.

670.325 Proceedings on denial of license; restraining violations; authority of hearing officers; record of proceedings.

(1) All proceedings for the refusal to issue, or the suspension or revocation of any license, certificate of registration or other evidence of authority required to practice any profession subject to the authority of a professional licensing or advisory board shall be conducted pursuant to the procedure for contested cases required or authorized by ORS

183.310 to 183.550.

(2) If a professional licensing or advisory board decides that any person has or is about to engage in any activity that is or will be a violation of law the board is charged with enforcing, the board may institute a proceeding in an appropriate circuit court to restrain the activity or proposed activity. An injunction may be issued without proof of actual damages, but does not relieve the defendant of any criminal liability.

(3) Any hearing officer conducting a hearing for a professional licensing board is vested with full authority of the board to schedule and conduct hearings on behalf and in the name of the board on all matters referred to the hearing officer for hearing by the board, including proceedings for placing persons registered or licensed by the board on probation and for suspension and revocation of registration or licenses, and shall cause to be prepared and furnished to the board, for decision thereon by the board, a complete written transcript of the record of the hearing. The transcript shall contain all evidence introduced at the hearing and all pleas, motions and objections and all rulings of the hearing officer. Each hearing officer may administer oaths and issue summonses, notices and subpoenas, but may not place any registrant or licensee on probation or issue, refuse, suspend or revoke a registration or license. [1971 c.753 §13; 1987 c.414 §99; 1999 c.849 §155]

70.280 Denial, suspension or revocation of license is prohibited solely because of a criminal conviction; exception. Except as provided in ORS 342.143 or 342.175, no licensing board or agency shall deny, suspend or revoke an occupational or Professional license or certification solely for the reason that the applicant or licensee has been

convicted of a crime, but it may consider the relationship of the facts which support the conviction and all intervening circumstances to the specific occupational or professional standards in determining the fitness of the person to receive or hold such license or certificate. [1973 c.359 §1; 1991 c.662 §6a]

CONSTITUTION OF OREGON

Section 10. Administration of justice. No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done him in his person, property, or reputation.

Section 11. Rights of Accused in Criminal Prosecution. In all criminal prosecutions, the accused shall have the right to public trial by an impartial jury in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor; provided, however, that any accused person, in other than capital cases, and with the consent of the trial Judge, may elect to waive trial by jury and consent to be tried by the judge of the court alone, such election to be in writing; provided, however, that in the circuit court ten members of the jury may render a verdict of guilty or not guilty, save and except a verdict of guilty of first degree murder, which shall be found only by a unanimous verdict, and not otherwise; provided further, that the existing laws and constitutional provisions relative to criminal prosecutions shall be continued and remain in effect as to all prosecutions for crimes committed before the taking effect of this amendment. [Constitution of 1859; Amendment

proposed by S.J.R. 4, 1931, and adopted by the people Nov. 8, 1932; Amendment proposed by S.J.R. 4, 1931 (2d s.s.), and adopted by the people May 18, 1934]

Section 17. Jury trial in civil cases. In all civil cases the right of Trial by Jury shall remain inviolate.

Section 33. Enumeration of rights not exclusive. This enumeration of rights, and privileges shall not be construed to impair or deny others retained by the people.

CONSTITUTION OF THE UNITED STATES

Section. 10. Limitations upon powers of states. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque or Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

ARTICLE. IV.

Section. 2. Privileges and immunities of citizens; surrender of fugitives from other states. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States. . . .

ARTICLE. V.

When Prosecution to be by presentment or indictment; double jeopardy; self-incrimination; due process; compensation for property taken for public use. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public

danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

Rights of accused in criminal prosecutions. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense. [Proposed by Congress in 1789 and ratified by the necessary number of states in 1791]

AMENDMENT VII

Trial by jury in civil cases. In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law. [Proposed by Congress in 1789 and ratified by the necessary number of states in 1791]

AMENDMENT XIV

Section 1. Citizenship; privileges and immunities; due process; equal protection. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall

abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

OREGON BAR RULES OF PROCEDURE

Rule 1.3 Nature Of Proceedings.

Contested admission, disciplinary, and reinstatement proceedings are neither civil nor criminal in nature but are sui generis, and are designed as the means to determine whether an attorney should be disciplined for misconduct, or whether an applicant's conduct should preclude the applicant from being admitted to the Bar, or from being reinstated to membership in the Bar.

Rule 1.4 Jurisdiction; Choice of Law.

(b) Choice of Law. In any exercise of the disciplinary authority of Oregon, the rules of professional conduct to be applied shall be as follows:

(1) For conduct in connection with a proceeding in a court before which an attorney has been admitted to practice, either generally or for purposes of that proceeding, the rules to be applied shall be the rules of the jurisdiction in which the court sits, unless the rules of the court provide otherwise; and

(2) For any other conduct,

(A) If the attorney is licensed to practice only in Oregon, the rules to be applied shall be the Oregon

Code of Professional Responsibility and the Bar Act; and

(B) If the attorney is licensed to practice in Oregon and another jurisdiction, the rules to be applied shall be the rules of the jurisdiction in which the attorney principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the attorney is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.

(Rule 1.4 amended by Order dated September 30, 1996.)

2.2 Investigators.

Disciplinary Counsel may, from time to time, appoint a suitable person, or suitable persons, to act as an investigator, or investigators, for the Bar with respect to complaints, allegations or instances of alleged misconduct by attorneys and matters of admission and reinstatement of attorneys. Such investigator or investigators shall perform such duties in relation thereto as may be required by Disciplinary Counsel.

Rule 2.3 Local Professional Responsibility Committees And State Professional Responsibility Board.

(a) LPRCs.

(1) Appointment. The Board shall create a local professional responsibility committee for each of the districts into which the counties of the state are grouped by the Board for convenient administrative purposes. The size of each LPRC shall be as the Board determined and each LPRC may have a member of the public who is not an attorney. Members of LPRCs shall be appointed by the Board for one-year terms, and may be reappointed. The Board shall appoint a chairperson for each committee.

(2) Duties of LPRCs.

(A) Disciplinary Counsel shall refer complaints or allegations of misconduct to an LPRC, as necessary and appropriate, by assigning each matter to a specific LPRC member, with notice to the LPRC chairperson.

(B) Members of the LPRC serve as fact-finders, investigating those complaints or allegations of misconduct referred to them by the SPRB or Disciplinary Counsel. Upon the conclusion of an investigation by an LPRC member, the member shall submit a written report to Disciplinary Counsel with specific findings. The LPRC member also shall provide a copy of such report to the chairperson of the LPRC of which he or she is a member.

(C) LPRC members are to complete each investigation and submit a written report within 90 days of the receipt of the referral from Disciplinary Counsel. The SPRB may grant one extension of time for a maximum of 60 days for good cause shown. Thereafter, if the investigation is not complete, the LPRC shall refer the matter back to Disciplinary Counsel for completion.

(D) An LPRC chairperson shall monitor the progress of the investigations assigned to the members of his or her committee, and may assign additional committee members to an investigation if the principal investigator requests it or if the LPRC chairperson deems it appropriate.

(E) An LPRC member may request that the LPRC chairperson convene a meeting of the LPRC or otherwise solicit input from other LPRC members in those matters justifying such committee deliberation. However, an LPRC member need not obtain the approval of the LPRC as a

whole, or of the chairperson, before submitting his or her final investigative report to Disciplinary Counsel.

(F) LPRCs shall perform such other duties on behalf of the Bar as may be referred to such LPRCs by the SPRB or Disciplinary Counsel.

(3) Authority.

(A) LPRCs shall have the authority to take evidence, administer oaths or affirmations, and issue subpoenas to compel the attendance of witnesses, including the attorney being investigated, and the production of books, papers and documents pertaining to the matter under investigation.

(B) A witness in an investigation conducted by an LPRC who testifies falsely, fails to appear when subpoenaed, or fails to produce any books, papers or documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. LPRCs may enforce any subpoena issued pursuant to BR 2.3(a)(3)(A) by application to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.

(C) A member of an LPRC may administer oaths or affirmations and issue any subpoena provided for in BR 2.3(a)(3)(A).

(b) SPRB.

(1) Appointment. The Board shall create for the state at large a state professional responsibility board and appoint its members.

(2) Duties of SPRB. The SPRB shall supervise the investigation of complaints, allegations, or instances of alleged misconduct on the part of attorneys and act on such matters as it may deem appropriate. A complaint by a client or other aggrieved person shall not be a prerequisite to the investigation of alleged misconduct by attorneys or the institution of disciplinary proceedings against any attorney.

(3) Authority.

(A) The SPRB shall have the authority to dismiss complaints, allegations or instances of alleged misconduct against attorneys, refer matters to Disciplinary Counsel or LPRCs for investigation, issue admonitions for misconduct, refer matters to the State Lawyers Assistance Committee, approve and supervise diversion agreements, institute disciplinary proceedings against any attorney, or take other action within the discretion granted to the SPRB by these rules.

(B) The SPRB shall have the authority to adopt rules dealing with the handling of its affairs, subject to approval by the Board.

(C) The SPRB shall have the authority to take evidence, administer oaths or affirmations, and issue subpoenas to compel the attendance of witnesses, including the attorney being investigated, and the production of books, papers and documents pertaining to the matter under investigation.

(D) A witness in an investigation conducted by the SPRB who testifies falsely, fails to appear when subpoenaed, or fails to produce any books, papers or documents pursuant to subpoena, shall be subject to the same orders and penalties to

which a witness before a circuit court is subject. The SPRB may enforce any subpoena issued pursuant to BR 2.3(b)(3)(A) by application to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.

Rule 2.4 Disciplinary Board.

(e) Duties of State Chairperson.

(1) The state chairperson shall coordinate and supervise the activities of the Disciplinary Board, including the monitoring of timely preparation and filing of trial panel opinions.

(2) The state chairperson shall not be required to, but may, serve on trial panels during his or her term of office.

(3) The state chairperson shall resolve all challenges to the qualifications of regional chairpersons under BR 2.4(g) and all challenges to the qualifications of trial panels appointed in contested reinstatement proceedings.

(4) Upon receipt of written notice from Disciplinary Counsel of service of a statement of objections, the state chairperson shall appoint a trial panel and trial panel chairperson from an appropriate region. The state chairperson shall give written notice to Disciplinary Counsel, Bar Counsel and the applicant of such appointments and a copy of the notice shall be filed with the Disciplinary Board Clerk.

(5) The state chairperson shall appoint a member of the Disciplinary Board to conduct pre-hearing conferences as provided in BR 4.6.

(6) The state chairperson may appoint Disciplinary Board members from any region to serve on trial panels or to

conduct pre-hearing conferences as may be necessary to resolve the matters submitted to the Disciplinary Board for consideration.

(7) In matters involving final decisions of the Disciplinary Board under BR 10.1, the state chairperson shall review statements of costs and disbursements and objections thereto and shall fix the amount of actual and necessary costs and disbursements to be recovered by the prevailing party.

(f) Duties of Regional Chairperson.

(1) Upon receipt of written notice from Disciplinary Counsel of service of a formal complaint, the regional chairperson shall appoint a trial panel from the members of the regional panel and a chairperson thereof. The regional chairperson shall give written notice to Disciplinary Counsel, Bar Counsel and the accused of such appointments and a copy of the notice shall be filed with the Disciplinary Board Clerk.

(5) The regional chairperson shall rule on all questions of procedure and discovery that arise prior to the appointment of a trial panel and trial panel chairperson.

(h) Duties of Trial Panel Chairperson. The Disciplinary Board Clerk shall mail to the trial panel finally selected a copy of the formal complaint or statement of objections and, if one has been filed, the answer of the accused or applicant. Upon receipt of the pleadings from Disciplinary Board Clerk, the trial panel chairperson shall promptly establish the date and place of hearing pursuant to BR 5.4 and notify in writing the Disciplinary Board Clerk and the parties of the date and place of hearing. The trial panel chairperson shall rule on all pre-hearing matters, except for challenges under BR 2.4(e)(3). The trial panel chairperson shall convene the

hearing, oversee the orderly conduct of the same, and timely file with the Disciplinary Board Clerk the written opinion of the trial panel.

(I) Duties of Trial Panel.

(1) Trial. It shall be the duty of a trial panel to which a disciplinary or contested reinstatement proceeding has been referred, promptly to try the issues. The trial panel shall pass on all questions of procedure and admission of evidence.

(2)

(a) Opinions.

The trial panel shall render a written opinion signed by the concurring members of the trial panel. A dissenting member shall note the dissent and may file a dissenting opinion attached to the majority opinion of the trial panel. The majority opinion shall include specific findings of fact, conclusions and a disposition. The trial panel chairperson shall file the original opinion with the Disciplinary Board Clerk, and serve copies on the parties and the State Court Administrator. It shall be filed within 28 days after the conclusion of the hearing, the settlement of the transcript if required under BR 5.3(e), or the filing of briefs if requested by the trial panel chairperson pursuant to BR 4.8, whichever is later.

(3) Record. The trial panel shall keep a record of all proceedings before it, including a transcript of the evidence and exhibits offered and received, and shall promptly file such record with the Disciplinary Board Clerk.

Rule 2.6 Investigations

(a) Review by Disciplinary Counsel.

(1) For disciplinary complaints referred to Disciplinary Counsel by the client assistance office pursuant to BR 2.5(a)(2), Disciplinary Counsel shall, within 14 days after receipt of the complaint, mail a copy of said complaint to the attorney, if the client assistance office has not already done so, and notify the attorney that he or she must respond to the complaint in writing to Disciplinary Counsel within 21 days of the date Disciplinary Counsel requests such a response. Disciplinary Counsel may grant an extension of time to respond for good cause shown upon the written request of the attorney. An attorney need not respond to the complaint if he or she provided a response to the client assistance office and is notified by Disciplinary Counsel that further information from the attorney is not necessary.

(2) If the attorney fails to respond within the time allowed, Disciplinary Counsel may refer the complaint to an appropriate LPRC within 14 days of the time set for the response. The procedure set forth in BR 2.3(a) shall be followed. Disciplinary Counsel shall inform the complainant and the attorney in writing of this action.

(b) Dismissal by Disciplinary Counsel. If, after considering a disciplinary complaint, the response of the attorney, and any additional information deemed relevant, Disciplinary Counsel determines that probable cause does not exist to believe misconduct has occurred, the complaint shall be dismissed. The complainant and the attorney shall be notified in writing by Disciplinary Counsel of the dismissal. A complainant may contest in writing the action taken by Disciplinary Counsel in dismissing his or her complaint, in which case Disciplinary Counsel shall submit a report on the

complaint to the SPRB at a scheduled meeting. The SPRB shall thereafter take such action as it deems appropriate on such complaint.

C) Review by SPRB.

(1) If Disciplinary Counsel determines that misconduct may be involved, the complaint shall be referred by Disciplinary Counsel to an appropriate LPRC for further investigation, or referred by Disciplinary Counsel to the SPRB at a scheduled meeting. If the complaint is referred to an LPRC by Disciplinary Counsel, the procedure specified in BR 2.3(a) shall be followed. Otherwise, the SPRB shall evaluate the complaint based on the report of Disciplinary Counsel to determine whether probable cause exists to believe misconduct has occurred. The SPRB shall either dismiss the complaint, refer it to an LPRC, admonish the attorney, authorize Disciplinary Counsel to negotiate and enter into a diversion agreement pursuant to BR 2. 10, approve the filing of a formal complaint by the Bar against the attorney, or take action within the discretion granted to the SPRB by these rules.

(A) If the SPRB determines that probable cause does not exist to believe misconduct has occurred, the complaint shall be dismissed and the complainant and the attorney shall be notified of the dismissal in writing by Disciplinary Counsel.

(B) If the SPRB determines that the attorney should be admonished, such procedure shall be initiated within 14 days of the SPRB's meeting. If an attorney refuses to accept the admonition within the time specified by Disciplinary Counsel, a formal complaint shall be filed by the Bar against the attorney. Disciplinary Counsel shall notify the complainant and the attorney in writing of this action.

C) If the SPRB determines that the complaint should be investigated further, Disciplinary Counsel shall conduct the investigation or submit the complaint to the appropriate LPRC within 14 days of the SPRB's meeting. Disciplinary Counsel shall notify the complainant and the attorney in writing of this action.

(d) Review of LPRC Reports by SPRB.

(1) Disciplinary Counsel shall submit an LPRC's report to the SPRB at a scheduled meeting. The SPRB shall evaluate the complaint based on the LPRC's report and the report of Disciplinary Counsel to determine whether probable cause exists to believe misconduct has occurred. The SPRB shall either dismiss the complaint, have it investigated further, admonish the attorney, authorize Disciplinary Counsel to negotiate and enter into a diversion agreement pursuant to BR 2. 10, approve the filing of a formal complaint against the attorney, or take action within the discretion granted to the SPRB by these rules.

(A) If the SPRB determines that probable cause does not exist to believe misconduct has occurred, the complaint shall be dismissed and the complainant and the attorney shall be notified of the dismissal in writing by Disciplinary Counsel.

(B) If the SPRB determines that the attorney should be admonished, such action shall be initiated within the time set forth in BR 2.6(c)(1)(B). If an attorney refuses to accept the admonition within the time specified by Disciplinary Counsel, a formal complaint shall be filed by the Bar against the attorney. Disciplinary Counsel shall notify the complainant and the attorney in writing of this action.

C) If the SPRB determines that further investigation is needed, Disciplinary Counsel shall conduct the investigation or, within 14 days of the SPRB's meeting, refer the matter to the appropriate LPRC member who shall conduct a further investigation in accordance with BR 2.3(a). The further investigation by an LPRC shall be completed and a report shall be filed with Disciplinary Counsel within 30 days after the date of the referral. Disciplinary Counsel shall notify the complainant and the attorney in writing of this action. The report of the further investigation shall be submitted to the SPRB at a scheduled meeting, at which the SPRB shall take action in accordance with BR 2.6(d)(1).

(e) Reconsideration; Discretion to Rescind.

(1) A decision by the SPRB to dismiss a complaint or allegation of misconduct against an attorney shall not preclude reconsideration or further proceedings on such complaint or allegation if evidence not available or submitted at the time of such dismissal justifies, in the judgment of not less than a majority of SPRB, such reconsideration or further proceedings.

(2) A decision by the SPRB to file a formal complaint against an attorney for misconduct may be rescinded by the SPRB only when, to the satisfaction of a majority of the entire SPRB, good cause exists. Good cause is:

(A) new evidence which would have clearly affected the SPRB's decision to file a formal complaint; or

(B) legal authority, not known to the SPRB at the time of its last consideration of the matter, which establishes that the SPRB's decision to file a formal complaint was incorrect.

(f) Approval of Charges.

(1) If the SPRB determines that a formal complaint should be filed against an attorney, or if an attorney rejects an admonition offered by the SPRB, Disciplinary Counsel may appoint Bar Counsel. The attorney and the complainant shall be notified in writing by Disciplinary Counsel of such action.

(2) Notwithstanding a determination by the SPRB that probable cause exists to believe misconduct has occurred, the SPRB shall have the discretion to direct that no further action on a complaint or allegation of misconduct be taken by the Bar if one or more of the following circumstances exist: the attorney is no longer an active member of the Bar or is not engaged in the practice of law, and is required under BR 8.1 to demonstrate good moral character and general fitness to practice law before resuming active membership status or the practice of law in Oregon; other disciplinary proceedings are pending that are likely to result in the attorney's disbarment; other disciplinary charges are authorized or pending and the anticipated sanction should the Bar prevail on those charges, is not likely to be affected by a guilty finding in the new matter or on an additional charge; or formal disciplinary proceedings are impractical in light of the circumstances or the likely outcome of the proceedings. An exercise of discretion under this rule to take no further action on complaint or allegation of misconduct shall not preclude further consideration or proceedings by the SPRB on such complaint or allegation in the future.

(3) Notwithstanding a determination by the SPRB that probable cause exists to believe misconduct has occurred, the SPRB shall have the discretion to dismiss a complaint or allegation of misconduct if the SPRB, considering the facts and circumstances as a whole, determines that dismissal would further the interests of justice and would not be

harmful to the interests of clients or the public. Factors the SPRB may take into account in exercising its discretion under this rule include, but are not limited to: the attorney's mental state; whether the misconduct is an isolated event or part of a pattern of misconduct; the potential or actual injury caused by the attorney's misconduct; whether the attorney fully cooperated in the investigation of the misconduct; and whether the attorney previously was admonished or disciplined for misconduct. Misconduct that adversely reflects on the attorney's honesty, trustworthiness, or fitness to practice law shall not be subject to dismissal under this rule.

Title 3 -- Special Proceedings

Rule 3.4 Conviction Of Attorneys.

(a) Referral of Convictions to Court. Disciplinary Counsel, after reporting on the matter to the SPRB, shall promptly notify the court after receiving notice that an attorney has been convicted in any jurisdiction of an offense that is a misdemeanor which may involve moral turpitude or is a felony under the laws of this state, or is punishable by death or imprisonment under the laws of the United States. Disciplinary Counsel shall file a copy of the documents which show the conviction and a statement of the SPRB's recommendation regarding the imposition of a suspension with the court, with written notice to the attorney. A "conviction" for the purposes of this rule shall be considered to have occurred upon entry of a plea of guilty or no contest or upon entry of a finding or verdict of guilty.

(b) Response of Attorney. Any written material the attorney wishes the court to consider in the matter must be filed with the court within 14 days of the filing of the Bar's statement, with proof of service on Disciplinary Counsel.

(c) Response of Bar. The Bar shall have 7 days from the filing of written material by the attorney with the court to file with the court a response thereto. The Bar shall submit to the court proof of service of its response on the attorney.

(d) Suspension. Upon review of the documents showing the conviction and the material filed by the attorney and the Bar, the court may suspend the attorney from the practice of law until further order of the court. An attorney suspended from practice under this rule shall comply with the requirements of BR 6.3(a) and (b).

(e) Hearing. Whether or not the court suspends the attorney, the court may refer the matter to the Disciplinary Board for the scheduling of a hearing before a trial panel. The hearing shall be to determine what discipline, if any, should be imposed for the attorney's conviction. The referral shall be made in writing to the Disciplinary Board Clerk, with copies to Disciplinary Counsel and the attorney. Upon receipt of notice of a referral of a conviction matter to the Disciplinary Board, Disciplinary Counsel may appoint Bar Counsel to file a formal complaint regarding the conviction. The same rules as apply in a disciplinary proceeding shall apply in a conviction proceeding.

(f) Independent Charges; Consolidated Proceedings. The SPRB may cause disciplinary charges to be filed against the attorney independent of the fact of the attorney's conviction. In such case those charges shall be consolidated for hearing with the conviction matter, if the conviction matter has been referred to the Disciplinary Board by the court.

(g) Review by Court. The trial panel's decision shall be subject to review by the court as is authorized in Title 10 of

these rules.

(h) Reinstatement Rules Apply. The rules on reinstatement shall apply to attorneys suspended or disbarred pursuant to the procedure set forth in BR 3.4(e), (f) and (g).

(i) Relief From Suspension. If an attorney's conviction is reversed on appeal, and such reversal has become a final order not subject to further appeal or review, or the attorney has been granted a new trial which order has become final, a suspension or discipline previously ordered shall be vacated upon the court's receipt of the judgment of reversal or order granting the attorney a new trial. Reversal of the attorney's conviction on appeal OSB Rules of Procedure (Revised 1/04) 24 or the granting of a new trial does not require the termination of any disciplinary proceeding based upon the same facts which gave rise to the conviction.

(Rule 3. 4(d) amended by Order dated March 13, 1989, effective April 1, 1989)

(Rule 3.4(e) amended by Order dated February S, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003)

Rule 3.5 Reciprocal Discipline.

- (a) Notice to Court. Disciplinary Counsel, after reporting on the matter to the SPRB, shall promptly notify the court after receiving notice that an attorney has been disciplined for misconduct in another jurisdiction. Disciplinary Counsel shall file a copy of the judgment, order or determination of discipline with the court, with written notice to the attorney. A plea of no contest, a stipulation for discipline or a resignation while formal charges are pending shall be considered a judgment or order of discipline for the purposes of this rule. The judgment or order or determination of discipline shall be accompanied by a recommendation of the

SPRB as to the imposition of discipline in Oregon based on the discipline in the jurisdiction whose action is reported to the court, and such other information as the Bar deems appropriate to file with the court.

(b) Judgment Sufficient Evidence of Misconduct. A copy of the judgment, order or determination of discipline shall be sufficient evidence for the purposes of this rule that the attorney committed the misconduct described therein.

(c) Answer of Attorney. The attorney shall have 21 days from the filing of the judgment, order, or determination of discipline with the court to file with the court an answer discussing the following issues:

(1) Was the procedure in the jurisdiction which disciplined the attorney lacking in notice or opportunity to be heard?

(2) Should the attorney be disciplined by the court? The attorney shall mail a copy of his or her answer to Disciplinary Counsel and file proof of mailing with the court.

(d) Reply of Bar. The Bar shall have 14 days from the expiration of the time specified in BR 3.5©) in which to file a reply to the attorney's answer with the court. The Bar shall mail a copy to the attorney and file proof of mailing with the court.

(e) Review by Court; Referral for Hearing. Upon review of the judgment, order or determination of discipline and the response and answer filed by the attorney and the Bar, and after oral argument if ordered by the court, the court shall determine whether the attorney should be disciplined in Oregon for misconduct in another jurisdiction and if so, in what manner. The court, in its discretion, may refer the

matter to the Disciplinary Board for the purpose of taking testimony on the issues set forth in BR 3.5(c)(1) and (2). The referral shall be made in writing to the Disciplinary Board Clerk with copies to Disciplinary Counsel and the attorney. Upon receipt of a notice of referral to the Disciplinary Board, Disciplinary Counsel may appoint Bar Counsel to file a formal complaint regarding the issues before the Disciplinary Board. The same rules as apply in a disciplinary proceeding shall apply in a reciprocal discipline proceeding.

(f) Burden of Proof. The attorney shall have the burden of proving in any hearing held pursuant to BR 3.5(e) that due process of law was not afforded the attorney in the other jurisdiction.

(g) Hearing; Review by Court. A trial panel appointed by the state chairperson shall make a decision concerning the issues submitted to it. The trial panel's decision shall be subject to review by the court as is authorized in Title 10 of these rules.

(h) Suspension. The court may suspend an attorney from the practice of law in this state at the time it approves a referral of the matter to the Disciplinary Board for hearing. The suspension shall remain in effect until otherwise ordered by the court. An attorney suspended under this rule shall comply with the requirements of BR 6.3(a) and (b).

(i) Reinstatement Rules Apply. The rules on reinstatement shall apply to attorneys suspended or disbarred pursuant to the procedure set forth in BR 3.5(e), (f) and (g).

(j) Independent Charges. Nothing in this rule shall preclude the filing of disciplinary charges by the Bar against an attorney for misconduct in any jurisdiction.

(Rule 3.5 amended by Order dated July 16, 1984, effective

August 1, 1984.)

(Rule 3.5(h) amended by Order dated March 13, 1989, effective April 1, 1989.)

(Rule 3.5(e) amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)

Rule 5.1 Evidence And Procedure.

(a) Rules of Evidence. Trial panels may admit and give effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. Incompetent, irrelevant, immaterial, and unduly repetitious evidence should be excluded at any hearing conducted pursuant to these rules.

(b) Harmless Error. No error in procedure, in admitting or excluding evidence, or in ruling on evidentiary or discovery questions shall invalidate a finding or decision unless upon a review of the record as a whole, a determination is made that a denial of a fair hearing to either the Bar or the accused has occurred.

(Rule 5.1 (a) amended by Order dated February 23, 1988)

Rule 5.2 Burden Of Proof.

The Bar shall have the burden of establishing misconduct by clear and convincing evidence.

A. Rule 5.3 Location Of Hearing; Subpoenas; Testimony.

(a) Location. In the trial of any disciplinary proceeding, the hearing shall be held either in the county in which the person charged maintains his or her office for the practice of law or other business, in which he or she resides, or in which the

offense is alleged to have been committed, in the discretion of the trial panel chairperson. With the consent of the accused, the hearing may be held elsewhere. In the trial of a disciplinary proceeding involving an accused who does not maintain an office or residence in Oregon and the alleged misconduct did not occur in Oregon, or in the trial of any contested reinstatement matter, the hearing shall be held at a location designated by the state chairperson of the Disciplinary Board.

(b) Subpoenas. The Executive Director, the state chairperson or regional chairpersons of the Disciplinary Board, trial panel chairpersons, Bar Counsel, Disciplinary Counsel and the attorney of record for the accused or the accused, if appearing without an attorney, shall have the authority to issue subpoenas. Subpoenas shall be issued and served in accordance with the Oregon Rules of Civil Procedure in the same manner as in a case pending in a circuit court. Any witness who testifies falsely, fails to appear when subpoenaed, or fails to produce any documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. Subpoenas issued pursuant to BR 4.5 may be enforced by application of the Bar or an accused to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.

(c) Board Members as Witnesses. Current members of the Board of Governors shall not testify as witnesses in any Bar admission, discipline or reinstatement proceeding except pursuant to subpoena.

(d) Testimony. Witnesses shall testify under oath or affirmation administered by any member of the Disciplinary Board or by any person authorized by law to administer an

oath.

(e) Transcript of Proceedings; Correction of Errors; Settlement Order. Every disciplinary hearing shall be transcribed. The transcription shall be certified by the person preparing it. The reporter shall give written notice to Disciplinary Counsel, Bar Counsel, and the accused of the filing of the transcripts with the Disciplinary Board Clerk, who shall provide copies to the trial panel chairperson.

Rule 5.7 Consideration Of Sanctions.

Trial panels may receive evidence relating to the imposition of a sanction during a hearing, but are not to consider that evidence until after a determination is made that the accused is in violation of a disciplinary rule or statute. Only when the trial panel chairperson considers it appropriate because of the complexity of the case or the seriousness of the charge or charges, the trial panel may be reconvened to consider evidence in aggravation or mitigation of the misconduct found to have occurred. (Rule 5.7 amended by Order dated February 23, 1988.)

Rule 6.1 Sanctions.

(e) Effect of Disbarment. An attorney disbarred as a result of a disciplinary proceeding commenced by formal complaint before January 1, 1996, may not apply for reinstatement until five years has elapsed from the effective date of his or her disbarment. An attorney disbarred as a result of a disciplinary proceeding commenced by formal complaint after December 31, 1995, shall never be eligible to apply and shall not be considered for admission under ORS 9.220 or reinstatement under Title 8 of these rules.

(Rule 6.1(a) amended by Order dated May 31, 1984,

effective July 1, 1984. Rule 6.1(d) amended by Order dated November 29, 1985, effective December 1, 1985. Rule 6.1(a) amended by Order dated December 14, 1995. Rule 6.1(d) amended by Order dated December 14, 1995. Rule 6.1(e) added by Order dated December 14, 1995. Rule 6.1(a) amended by Order dated June 5, 1997, effective July 1, 1997.) (Rule 6.1(a) amended by Order dated February 5, 2001.)

